Part 159
National Capital Airports

This edition replaces the existing loose-leaf Part 159 and its changes.

This FAA publication of the basic Part 159, effective October 1, 1962, incorporates Amendments 159–1 through 159–31 with preambles.

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and is reflected in the mailing label used to send you Notices of Rulemaking, therefore, it is important that you save one of the mailing labels and include it in any correspondence you initiate concerning this NPRM service as it will ensure positive identification and prompt response.

NPRM ORDER FORM

U.S. Department of Transportation
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IMPORTANT NOTICE

Part 159 is sold on a subscription basis by the Superintendent of Documents, U.S. Government Printing Office; therefore, subscribers will receive changes to this part automatically.

NOTICE TO FAA AND OTHER GOVERNMENT USERS

Distribution of changes to this part within the Federal Aviation Administration and other U.S. Government agencies will be made automatically by FAA in the same manner as distribution of this basic part.

Subpart B—Motor Vehicle Rules

Subpart C—Aircraft Rules

Subpart D—Rules of Conduct

Subpart I—Enforcement [Reserved]

Part bearing the same number. To differentiate between the two, the recodified Parts, such as this one, will be labeled "[New]". The label will of course be dropped at the completion of the project as all of the regulations will be new.

The purpose of the new Part is to revise present Part 570, "Washington National Airport" in order to bring its coverage up to date and to eliminate obsolete and redundant rules contained therein. In addition, to provide uniformity of rules for all airports under the Bureau of National Capital Airports of this Agency, the Part will also apply to Dulles International Airport.

Part 159 [New] was published as a notice of proposed rulemaking in the Federal Register on July 25, 1962 (27 F.R. 7035).

As a result of comments received, several minor changes of a technical or clarifying nature have been made and the following changes of a relaxatory nature have been made.

Section 159.57, as proposed, and as presently stated in § 570.51, would have prevented any person, unless he had the approval of the Airport Manager, from bringing an aircraft to the Airport for an aerial demonstration elsewhere. We do not believe that the rule needs to be this stringent and the section has been modified to apply this restriction only to the bringing of aircraft to the Airport for aerial demonstrations within the Airport control zone. In addition, the substance of the proviso of present § 570.51, authorizing courtesy flights demonstrating new equipment by air carriers, has been added to the section.

Various persons commented that proposed § 159.61, relating to the lowering of flaps by all aircraft taxiing in or out of a gate position. In view of those comments, the section has been revised to apply only to large propeller-driven aircraft, and only to taxiing out of a gate position.

Proposed § 159.99 would have prevented, except with the written permission of the Airport Manager, the bringing of any animal (except a dog to he transported by air) into the terminal building or a gate loading area. After further consideration, the exception has been broadened to include any small domestic animal.

Proposed § 159.141 would have authorized the Airport Manager, in his discretion, to provide runway foaming services upon the request of an aircraft operator, with the expense to be borne by the operator. As a result of comments received the section has been narrowed in scope so as to provide only that any operator for whom foaming services are provided, upon his request, shall pay the expenses arising therefrom.

Of the comments received on the proposal, several suggested changes in style, format, or technical wording. These comments have been carefully considered and, where consistent with the style, format, and terminology of the recodification project, were adopted.

The definitions, abbreviations, and rules of construction contained in Part 1 [New] of the Federal Aviation Regulations apply to the new Part 159.

Interested persons have been afforded an opportunity to participate in the making of this regulation, and due consideration has been given to all relevant matters presented. The Agency appreciates the cooperative spirit in which the public's comments were submitted.

Since FAA management and public property are involved, compliance with the effective date provisions of section 4 of the Administrative Procedure Act is not required.

In consideration of the foregoing, effective October 1, 1962, Chapter III of Title 14 of the Code of Federal Regulations is amended by deleting Parts 570 and 571, and Chapter I of Title 14 is amended by adding Part 159 [New] reading as hereinafter set forth.

(Published in 28 FR 1035, February 2, 1963, effective February 4, 1963)

The purpose of this amendment is to clarify the applicability of Part 159 [New] of the Federal Aviation Regulations to the access road to Dulles International Airport, to set forth certain special motor vehicle operating rules applicable to that access road, and to clarify the effect of posted orders, instructions, and signs on Washington National Airport and Dulles International Airport, in accord with the intent of Congress.

The access road to Dulles International Airport is a limited purpose road, constructed solely to afford a safe and high speed connection to the Airport. In view of the need for fast ground transportation in connection with air transportation the access road is a vital part of the Dulles project. If this road were used by local traffic, or if traffic would enter or leave along the road at points other than those where ramps are provided to serve the needs of airport traffic, the usefulness of the road for the purpose to which it is dedicated would be impaired and might at times even be nullified. It follows that the road must be a ''limited access'' highway, not accessible from abutting private land but only through entrance and exit roads constructed by the Federal Aviation Agency, and that its use must be restricted to vehicles going to, or coming from, the airport, except in emergencies. In order to clarify this status of the access road and to advise the public thereof, appropriate provisions are added in new § 159.35.

Section 159.1(a) is amended to update the reference to the District of Columbia Code and to make clear that the access road is a part of Dulles Airport for the purposes of this Regulation, and that improvements on the airport land are included in the term ''the Airport''.

Paragraph (b) of § 159.1 and paragraph (a) of § 159.171 are amended to spell out more clearly the authority of the Director of the Bureau of National Capital Airports and the Airport Managers to issue orders and instructions and post signs, and the duty of airport users to comply therewith. In light of this amendment, present § 159.11(b) and the words ''prescribed by'' in § 159.17(a)(4) are repealed as redundant.

Since these amendments involve FAA management and public property and are largely clarifying in nature, and since the new express prohibitions will be implemented by posted signs, it is found that compliance with the notice, procedure, and effective date provisions of section 4 of the Administrative Procedure Act is unnecessary and these amendments may be made effective less than 30 days after publication.

In consideration of the foregoing, effective February 4, 1963, Part 159 [New] of the Federal Aviation Regulations is amended as follows.

These amendments are issued under the authority of section 1301 of title 7 of the District of Columbia Code, 1961 Edition, section 2 of the Act of June 29, 1940, as amended (72 Stat. 731), and sections 4 and 8 of the Act of September 7, 1950, as amended (72 Stat. 731).

Amendment revises § 159.1, deletes the paragraph designation ''(a)'' at the beginning of the first paragraph of § 159.11, deletes paragraph (b) of § 159.11, deletes the words ''prescribed and'' in § 159.17(a)(4), adds a new § 159.35, and amends paragraph (a) of § 159.171.

On March 26, 1963, this Agency issued Notice of Proposed Rule Making No. 63–12, (28 FR 3210), in which it set forth a proposal for landing charges at Washington National Airport and Dulles International Airport. These fees were proposed in accordance with the policy of Budget Bureau Circular No. A–25 of September 23, 1959. A number of comments were received from interested persons, and due consideration has been given to all relevant matter presented.

So far as comments on this project were not in full agreement with the proposal, they urged that the proposed charges, or some of them, or the exemptions, were not equitable, realistic, logical, or not within the policy of the Budget Bureau Circular. Upon careful evaluation of these sometimes conflicting viewpoints the Agency has decided to adopt the charges as proposed. They are within the realm of discretion allowed by the Circular and reflect the policy of Section 103 of the Federal Aviation Act. The differences, referred to in certain comments, between the proposed landing fees for general aviation at Washington National and Dulles International Airports, and the fees there charged to certain air carriers under contracts, reflect the various differences in facilities and costs between these Airports; the fact that the air carriers under contract perform themselves certain services which have to be performed by the Airport for general aviation aircraft; and the fact that some of the facilities furnished at Dulles International Airport are of no actual use and benefit to general aviation aircraft. Calculated on an added cost basis, the cost of collecting small fees does not exceed the amount of such fees.

Two corrections are made in the provision exempting certain aircraft. The weight limitation is uniformly stated as "3500 pounds or less", rather than "less than 3500 pounds". The further limitation on the exemption which restricted it to "non-revenue flights" was brought in to conformity with the language used for the same purpose in Parts 161, 163, and 165 of the Federal Aviation Regulations, namely, "aircraft not engaged in commercial operations". The latter formulation is more clearly within the scope of the policy of the Circular.

In consideration of the foregoing, Part 159 of the Federal Aviation Regulations is amended, effective September 1, 1963, as follows.

1. § 159.45 is deleted.

2. A new Subpart H is added to read as follows.

These amendments are made under the authority of section 1301 of Title 7 of the District of Columbia Code, 1961 Edition; section 2 of the Act of June 29, 1940, 54 Stat. 686, as amended; sections 4 and 8 of the Act of September 7, 1950, 64 Stat. 770, as amended; section 140 of the Act of August 31, 1951, (5 U.S.C. 140); and Budget Bureau Circular No. A–25 of September 23, 1959.

Amendment 159–3

Clarification of Delegation of Authority and Validity of Foreign Drivers' Licenses

Adopted: August 20, 1963 **Effective: August 27, 1963**

(Published in 28 FR 9384, August 27, 1963)

The purpose of this amendment is to change § 159.1(b) of Part 159 [New] of the Federal Aviation Regulations to reflect the delegations presently in force, of authority to issue orders and instructions, and post signs, at airports. The current language of the section does not properly reflect the organizational structure existing today. The change does not affect substance in any manner.

Also included in the amendment is a change to § 159.15(a) to make it clear that that paragraph does not prohibit the operation, on Airport roads at Washington National Airport and Dulles International Airport, of a motorised vehicle by a person holding an appropriate foreign operator's license but none issued in the United States. Before its recodification as § 159.15(a) of the Federal Aviation Regulations

This amendment is issued under the authority of section 1301 of Title 7 of the District of Columbia Code, 1961 edition, section 2 of the Act of June 29, 1940 (54 Stat. 686), as amended, and sections 4 and 8 of the Act of September 7, 1950 (64 Stat. 770), as amended.

Amendment 159–4

Applicability of Virginia Motor Vehicle Law on National Capital Airports

Adopted: January 22, 1965 **Effective: March 1, 1965**

[Published in 30 FR 1037, February 2, 1965)

By Notice 64–43 of September 10, 1964 (28 FR 13041) FAA proposed to incorporate into Part 159—Natlonal Capital Airports of the Federal Aviation Regulations those rules of conduct and prohibitions of the Virginia Motor Vehicle law that carry penalties greater than those provided by Federal law for petty offenses, but without incorporation of the penalties.

As was explained in the Notice, violations of Part 159 are petty offenses. Therefore, the net effect of incorporation of these provisions of Virginia law, less accompanying penalties, into Part 159 is to make violations of the incorporated provisions of Virginia law subject to prosecution as Federal petty offenses like any other violations of Part 159. Petty offenses may be tried before United States Commissioners unless the person charged elects to be tried in the U.S. District Court.

One of the two comments received endorses the proposal. The other comment misunderstood that the purpose of the amendment was to make certain laws applicable that did not already apply. It is emphasized that the proposal does not make these Virginia law applicable at the airports for the first time since they are now fully applicable and can be enforced as Federal laws by means of the penalties they provide (18 U.S.C 7, 13). The proposal makes it possible to prosecute violations of these provisions under the lesser penalties provided for violations of Part 159. This Agency cannot change the principles of law governing prosecution for the same conduct under both Federal and State law. However, this rule does not have the effect of subjecting violators to additional jeopardy of prosecution under either Federal or State law. The Virginia laws are incorporated as they are on the date of adoption of this amendment.

In consideration of the foregoing, Part 159 of the Federal Aviation Regulations, 14 CFR Part 159, is amended, effective March 1, 1965, as follows.

These amendments are made under the authority of the Washington National Airport Act (54 Stat. 686), as amended, and the Second Washington Airport Act (64 Stat. 770), as amended.

Amendment 159–5

Rules Governing Mobile Lounge Service at Dulles International Airport

Adopted: July 8, 1965 **Effective: August 14, 1965**

(Published in 30 FR 8828; July 14, 1965)

The purpose of this Amendment is to insert in Part 159—National Capital Airports—of the Federal Aviation Regulations, those rules governing the use of the Mobile Lounges at Dulles International Airport which legally affect, or are binding on, members of the general public. This Amendment is based on Notice of Proposed Rule Making 64–3, 29 FR 576.

law and tariffs, changes have been made in subdivisions (4) and (6) of paragraph (b) of proposed § 159.175, now § 159.175. Subdivision (4), the prohibition against intoxicated persons, was made to read like its counterpart in the air carrier operations rules. A new paragraph (e) has been added which empowers the Airport Operations Manager to grant exceptions from the restrictions of paragraphs (b) and (c) in cases of unusual hardship. Furthermore, it is not correct that, as asserted in comments, the carriers have no means other than the mobile lounge for transporting passengers to the aircraft at Dulles International Airport. Passengers acceptable for transportation in the aircraft but excluded from the mobile lounges by these regulations may be carried by such other means as the carrier may reasonably select.

Improvements of arrangement and language, without substantive change of the proposal, have also been made. Thus it was made clear that the prohibitions are addressed to both the carriers and members of the public who use the mobile lounges. No person may do anything prohibited by these provisions on board the mobile lounges, and the carriers may not allow such conduct. Provisions not addressed to the public have been omitted.

In consideration of the foregoing, effective August 14, 1965, Part 159 of Chapter I of Title 14 of the Code of Federal Regulations is amended as hereinafter set forth.

This Amendment is made under the authority of section 4 of the Act of September 7, 1950, 64 Stat. 770, as amended.

Amendment 159–6

Restrictions on Certain Malfunctioning Aircraft

Adopted: August 31, 1965 **Effective: October 4, 1965**

(Published in 30 FR 11348, September 4, 1965)

The purpose of this amendment is to provide additional safety measures for the ramp area in the event of malfunctioning aircraft at the National Capital Airports. In Notice of Proposed Rule Making 64–3 of January 10, 1964, 29 FR 576, the FAA proposed to amend Part 159 of the Federal Aviation Regulations to this effect by adding a new § 159.48—*Malfunctioning aircraft.*

The proposed rule relating to the operation on the ramp area or at gate positions, without permission from the Airport Manager, of an aircraft with complete loss of power on one side, inadequate brakes, or indication of a fire, was favored by some but opposed by other comments. In light of these comments the proposal has been modified.

Some comments objected that the pilot in command is best qualified to determine whether there is, or still is, fire on board. Under the proposed rule the Airport Manager may rely on the pilot's judgment in this respect if the Airport Manager is satisfied that the pilot's judgment can be accepted in light of all the circumstances.

The proposed prohibition against aircraft with inadequate brakes is not repetitious of existing § 159.59. That section, entitled "Aircraft equipment and operation rules", relates to aircraft not designed with adequate brakes. The proposed section relates to the contingency that brakes are inadequate because they are malfunctioning, and § 159.48 was clarified to this effect.

Respecting the rule against approach of aircraft which have lost all power on one side, one comment correctly points out that air carriers can safely taxi some types of aircraft to the gate with power on one side only. But this does not militate against the proposed rule since the Airport Manager may, on a case by case basis, give persons regularly operating those aircraft at the airport permission to bring them to the ramp area or gate position even with complete loss of power on one side.

This amendment is made under the authority of secs. 303(d), 307(b), 313(a), and 1107(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1344, 1348, 1354, 1507); the Washington Airport Act of June 29, 1940, as amended (54 Stat. 686), and the Second Washington Airport Act of September 7, 1950, as amended (64 Stat. 770).

Amendment 159–7

Student Pilot Operations at Dulles International Airport

Adopted: March 29, 1966 **Effective: March 29, 1966**

(Published in 31 FR 5258, April 1, 1966)

The purpose of this amendment is to partially remove the current restriction on the use of Dulles International Airport by student pilots.

In line with its continuing program of reexamining its regulatory requirements, the Agency has reviewed the requirement of § 159.53 that pilots operating aircraft at the National Capital Airports must hold at least a private pilot certificate and has found that limited operation of aircraft by qualified holders of student pilot certificates at Dulles International Airport will not adversely affect safety under current conditions. Therefore § 159.53 is being amended to allow those operations. The rule requiring at least a private pilot certificate remains unchanged at Washington National Airport.

The notice, public procedure, and effective date requirements of section 4 of the Administrative Procedure Act do not apply to this amendment because it relates to public property and because it relaxes an existing restriction.

In consideration of the foregoing, effective immediately, § 159.53 is amended to read as follows.

This amendment is made under the authority of section 4 of the Act of September 7, 1950, 64 Stat. 770, 72 Stat. 354, 731.

Amendment 159–8

Operation of Motor Vehicles and Registration by Pilots

Adopted: July 14, 1966 **Effective: July 22, 1966**

(Published in 31 FR 9865, July 21, 1966)

The purpose of this amendment is to conform the language of § 159.17(c) to that of the present Virginia Motor Vehicle statute and to redesignate the office where certain pilots are required to register upon arriving at the National Capital Airports.

Section 159.17(c), which relates to motor vehicles, is amended by changing the words "under safe control" to read "under proper control", so that the language of this section will be consistent with § 46.1–190(a) of Chapter 4, Regulations of Traffic, of Title 46.1 Motor Vehicles, of the Code of Virginia, 1950. Since the provisions of the Virginia Motor Vehicle statute were already applicable to the National Capital Airports, this amendment does not result in any substantive change.

In addition, the rule that now requires that certain pilots register at the operations office on the Airport, § 159.55, is amended to provide that they register at the operations office of the fixed-base operator.

Confinement of Aircraft Operations

Adopted: July 29, 1968 **Effective: August 5, 1968**

(Published in 33 FR 11076, August 3, 1968)

The purpose of this amendment to § 159.41 of the Federal Aviation Regulations is to permit the Airport Managers at the Washington National Airport and at the Dulles International Airport to designate certain specific taxi strips for operations of aircraft.

Section 159.41 states in pertinent part that "no person may use a taxi strip on the Airport for a takeoff or landing."

The Federal Aviation Administration is currently expecting that V/Stol aircraft operations will commence at the Washington National Airport and the Dulles International Airport on or about September 1, 1968. It is contemplated that some of the taxi strips at the two airports would be used for the V/Stol operations. This amendment to § 159.41 would allow the Airport Manager at each of the named airports to designate certain specific taxi strips for operations of these aircraft.

Since this amendment is relaxatory in nature and imposes no additional burden on any person, I find that notice and public procedure thereon are unnecessary, and that good cause exists for making it effective on less than 30 days notice.

In consideration of the foregoing, the second sentence of § 159.41 is amended, effective August 5, 1968, by adding the following words thereto:

"except as authorized by the Airport Manager".

This amendment is issued under the authority of section 1602 of Title 2, District of Columbia Code, section 2 of the Act of June 29, 1940, as amended, 54 Stat. 658, and sections 4 and 8 of the Act of September 7, 1950, as amended, 64 Stat. 770.

Amendment 159–10

Landing Charges

Adopted: September 4, 1968 **Effective: October 11, 1968**

(Published in 33 FR 12833, September 11, 1968)

The purpose of these amendments to Part 159 of the Federal Aviation Regulations is to revise the landing charges at the National Capital Airports provided in § 159.181; to limit the exception in § 159.181(b)(1) for aircraft of 3,500 pounds or less weight not engaged in commercial operations to landings at Dulles International Airport; and to clarify the exception, previously in § 159.181(b)(2), that concerns certain air carriers with specified contracts on landing charges. These amendments were proposed in Notice 68–13 issued on May 23, 1968 (33 FR 7884), and some favorable public comments were received.

Some comments opposed the proposed $4 minimum landing fee at Washington National Airport on the ground that it represented a discriminatory and disproportionate increase for small aircraft since they do not consume as much time on the runway as do large aircraft. However, experience indicates that in a mixed traffic pattern the use of runway commitment time is approximately the same for each landing or takeoff, regardless of the size of the aircraft. As stated in the Notice, the $4 minimum landing fee is based upon both indirect and direct costs of providing and maintaining the runways and

the landing fees are based do not include those of providing other air navigation aids such as the instrument landing systems and components installed at the airport for the benefit of all users.

Other comments asserted that in light of profits received at Washington National Airport, the real purpose of the minimum landing fee is to discourage general aviation's use of that airport, to divert that traffic to Dulles, or to subsidize losses incurred at Dulles. However, as stated before, the purpose is to recover cost on an equitable basis. Also, it must be noted, profits at Washington National Airport are derived largely from concessionaire revenues which, consistent with the policy of the Bureau of the Budget Circular A–25, are not limited to the recovery of costs alone. In recognition of the fact that landing fees cannot be set in advance to recover costs exactly, all landing fees, including those of air carriers under contract, are subject to periodic adjustments to reflect actual experience.

Suggestion was made in one comment that helicopters should pay the minimum landing fees. However, as stated in the Notice, helicopters do not use the runways for landing purposes, and the decision to exclude them from payment of the minimum landing fees is adhered to.

Some commentators questioned the rationale behind setting higher landing fees for turbojet powered aircraft that are of comparable weight with reciprocating engine or turbopropeller powered aircraft. The revised landing fees were established after considering the amounts domestic and flag air carriers pay for landings under existing contracts with the United States, and as revised they equalize the landing fees for air carriers and other users of the runways.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all relevant matter presented. These amendments are now issued for the reasons stated in Notice 68–13.

In consideration of the foregoing, § 159.181 of the Federal Aviation Regulations is amended, effective October 11, 1968.

These amendments are issued under the authority of the Act of June 29, 1940, as amended (54 Stat. 686), and the Act of September 7, 1950, as amended (64 Stat. 770), as amended, and Title V of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 483a).

Amendment 159–11

Clarification of Authority and Other Requirements, Limitation of Certain Activities, and Increase in Number of Persons Carried by Mobile Lounges

Adopted: December 4, 1968 **Effective: January 10, 1969**

(Published in 33 FR 18367, December 11, 1968)

The purpose of these amendments to Part 159 of the Federal Aviation Regulations, that prescribes the rules governing the use and occupancy of Washington National Airport and Dulles International Airport, is to reflect the delegations of authority to the Airport Manager at each of these Airports presently in force; to clarify certain requirements concerning activities on these Airports; to limit fishing, horseback riding, bicycle riding, and certain other activities on these Airports; and to increase to 102 the number of persons that may be carried by a mobile lounge at Dulles.

These amendments were proposed in Notice 68–19 issued on August 29, 1968, and published in the Federal Register on September 6, 1968 (33 FR 12677). Only two public comments were received on the Notice. One of these concurred with the proposals, and the other expressed no objection.

For the reasons given in the Notice, these amendments change Part 159, briefly summarized as follows:

(5) To make a "visual" as well as an "audible" signal the indication of approach of an emergency vehicle on an emergency call on the Airport (§ 159.21).

(6) To exclude persons other than vehicle operators from those required to report accidents on the Airport (§ 159.25).

(7) To add "drunkenness" to the conditions on the Airport to which the criminal laws of Virginia would relate (§ 159.71(d)).

(8) To require sublessees under lessees of hangars on the Airport to provide receptacles for, and remove rubbish from the premises (§ 159.127(d)).

(9) To require all motor vehicles operated in a hangar at the Airport to have their exhausts protected by screens or baffles (§ 159.137).

(10) To prohibit discrimination as to sex with respect to all services performed in operating a facility at the Airport (§ 159.161).

(11) To increase to 102 the number of persons that may be carried by a mobile lounge at Dulles International Airport.

Interested persons have been afforded an opportunity to participate in the making of these amendments, and due consideration has been given to all matter presented.

In consideration of the foregoing, Part 159 of the Federal Aviation Regulations is amended effective January 10, 1969.

These amendments are made under the authority of section 1302 of Title 7, District of Columbia Code, section 2 of the Act of June 29, 1940 (54 Stat. 658, as amended, and sections 4 and 8 of the Act of September 7, 1950 (64 Stat. 770), as amended.

Amendment 159–12

Minimum Pilot Certificate Requirements—Dulles International Airport

Adopted: November 28, 1969 **Effective: December 4, 1969**

(Published in 34 FR 19192, December 4, 1969)

The purpose of this amendment to § 159.53 of the Federal Aviation Regulations is to prohibit any person operating a civil aircraft from landing at or taking off from Dulles International Airport (including touch and go operations) unless he holds at least a private pilot certificate.

In view of the currently increasing and anticipated traffic volume at Dulles International Airport, the continued operation of aircraft at that Airport by persons holding only student certificates could adversely affect safety. Accordingly, it has been determined that a pilot holding a student pilot certificate should no longer be allowed to operate an aircraft at that Airport. Thus, under the rule a student pilot may not manipulate the controls for a landing at or takeoff from the Airport even though he is accompanied by a certificated flight instructor or other appropriately certificated pilot.

This amendment readopts a restriction that was modified by Amendment 159–7, effective March 29, 1966 (31 FR 5258). It imposes at Dulles the same pilot certificate requirement that has been in force at Washington National Airport.

Since this amendment relates to agency management and public property, notice and public procedure thereon are not required, and it may be made effective in less than 30 days.

Adopted: December 9, 1970 **Effective: January 15, 1971**

(Published in 35 FR 19172, December 18, 1970)

The purpose of this amendment to § 159.3 of the Federal Aviation Regulations is to provide new rules for persons operating motor vehicles for the purpose of carrying passengers for hire (including taxicabs) on Washington National and Dulles International Airports.

Interested persons have been afforded an opportunity to participate in the making of this amendment by notice of proposed rule making (Notice 70–24) issued on June 24, 1970, and published in the Federal Register on July 1, 1970 (35 FR 10695). Due consideration has been given to all comments received in response to the Notice.

Five comments were received in response to the Notice. Four comments were favorable. One commentator opposed the proposed amendment, asserting the following:

(1) The manifest record requirements of § 159.3(b) of the proposed amendment would encroach upon the jurisdiction of the Public Service Commission of the District of Columbia and as such constitute an illegal exercise of jurisdiction by the FAA. However, the information required to be entered by § 159.3(b) supplements the requirements of the regulations of that Commission and no conflict or jurisdictional problem exists. Substantially the same information is required to be entered on the manifest by Commission rules and by the Metropolitan Area taxicab reciprocity agreement for prearranged transportation.

(2) The proposed amendment would perpetuate an undesirable condition at Washington National Airport by providing for the loading and unloading of passengers at the same place. The FAA recognizes that the establishment of separate loading and unloading zones could reduce congestion at the Airport, and it is currently studying the possibility of providing for this separation.

(3) The proposed amendment would cause further deterioration of service and safety, and would increase costs to the users. The FAA expects that the rule will improve safety and service by reducing traffic, particularly at Washington National Airport.

(4) The proposed amendment would continue in existence a ground transportation monopoly that has proven generally retrogressive of good service at other airports. However, a primary reason for an exclusive contract for ground transportation service for air travellers is to assure that adequate services of this nature are available at all times at the Airport. Thus, Dulles International Airport is 26 miles from Washington, D.C., and it may be doubted that satisfactory service could be provided without a contract carrier.

(5) The proposed amendment would require the contract carrier to increase its fleet, to the extent that the availability of non-contractor cabs would be reduced, to take care of peak periods of demand, resulting in higher costs to the users. The amendment is not intended to reduce the use of non-contractor cabs by passengers at the Airport. It should eliminate cruising, with the attendant traffic congestion at critical traffic points, particularly at Washington National Airport. Non-contractor cabs bringing passengers to the Airport would be allowed to pick up passengers at the point of and immediately upon discharge of passengers destined for the Airport. It should be noted that practically all of the passengers coming on the Airport do so in non-contractor cabs because contractor cabs cannot freely pick up passengers for the Airport in the Metropolitan Area. Alternatively, the commentator suggests that an open cab policy be established wherein all cabs would be charged a specific sum, in the form of a toll, for doing business on the Airport. The toll gate suggestion was considered by the FAA, but not implemented because it would not assure adequate service at all times and in all kinds of weather.

One commentator who was generally favorable to the proposed amendment asserted that permitting non-contractor cabs only to carry immediately from the Airport passengers picked up (without a prior request) at the point of and immediately upon discharge of other passengers delivered there, would be

This commentator also was concerned with the fact that the proposed amendment would provide that a person operating a motor vehicle for the purpose of carrying passengers for hire on the Airport in response to a prior request to pick up passengers there would show on his manifest the name of the person who made the request but not the name of the person to be picked up. The party who places the call and requests the transportation is the responsible party. To require that the name of every passenger picked up be listed in the manifest would not only be an undue burden on the cab driver but might raise questions of invasion of privacy. The objective is to assure that all cabs coming on the Airport are there pursuant to a legitimate request to provide transportation. The requirement for noting the name of the caller on the manifest is to provide verification that a prior request to pick up passengers was made. The name of the person to be picked up is not necessary for such verification.

In consideration of the foregoing, and for the reasons stated in Notice 70–24, § 159.3 of the Federal Aviation Regulations is amended, effective January 15, 1971.

(Section 4 of the Second Washington Airport Act; Title 7, District of Columbia 1404. Section 6(c) of the Department of Transportation Act; 49 U.S.C. 1655(c). Section 1.47(a) of the Regulations of the Office of the Secretary of Transportation).

Amendment 159–14

Motor Vehicles Carrying Passengers for Hire

Adopted: December 21, 1973 **Effective: January 1, 1974**

(Published in 38 FR 35451, December 28, 1973)

The purpose of this amendment to Part 159 of the Federal Aviation Regulations is to remove the current restrictions on the operation of taxicabs at Washington National Airport and thereby permit an ''open taxicab'' policy at that airport.

By amendment 159–13, effective January 15, 1971 (35 FR 19172), the FAA adopted new regulations governing the operation of motor vehicles used for the purpose of carrying passengers for hire on Washington National Airport and Dulles International Airport. That amendment, which amended § 159.3, prohibits the operation of a motor vehicle used for the purpose of carrying passengers for hire, including taxicabs, on the airports unless the operator is authorized to do so by contract with the United States, or the operator is on the airport to deliver passengers there or to pick up passengers immediately in response to a prior request, or the operator is to carry immediately from the airport, passengers picked up without a prior request at the point of and immediately upon discharge of other passengers delivered there. As stated in the Notice of Proposed Rule Making preceding Amendment 159–13 (Notice 70–24; published in the Federal Register on July 1, 1970; 35 FR 10695), that rule-making action was undertaken to improve the inadequate service then being provided the traveling public which had resulted from the inability of operators under contract with the United States to accurately estimate in advance the number of vehicles needed to meet unforeseen peak-hour or other unexpected demand.

Experience under the regulatory scheme provided under Amendment 139–13, with its emphasis upon both ''contract carriage'' and restricted noncontract carriage, has proved to be inadequate in meeting the needs of the traveling public at Washington National Airport. The same problems which Amendment 159–13 sought to correct remain and have grown, primarily the failure of the ground transportation concessionaire to provide enough taxicabs to meet the increasing demand at the airport. In addition, the current system has proven uneconomical to all parties concerned: to taxicab operators as a result of too frequent ''deadhead'' trips; to the FAA as a result of the difficulty of the concessionaire to operate at peak efficiency; and to the traveling public who under most circumstances are not able to engage nonconcessionaire taxicabs as a result of current restrictions.

to pick up airline passengers and other persons desiring transportation from Washington National Airport. It should be noted that the current restrictions would continue unchanged with regard to the operation of motor vehicles for the purpose of carrying passengers for hire, including taxicabs, at Dulles International Airport, and with regard to nontaxicab motor vehicle operations carrying passengers for hire at Washington National Airport. In addition, language has been added specifically requiring persons subject to § 159.3 to comply with all airport regulations, official signs and signals and the directions of airport police, dispatchers, and other authorized personnel. This language has been added in response to the traffic problems which have arisen at the airport.

New paragraph (b) of § 159.3 contains the requirements applicable to the operation of taxicabs at Washington National Airport. It is anticipated that, initially, two Taxicab Pickup Zones will be established at the airport, one in the area of the Main Terminal and the other in the area of the North Terminal, within which taxicabs may solicit, pick up, and stand awaiting pickup. A charge of $.50 will be levied upon the privilege of picking up passengers within the "Taxicab Pickup Zone" and not upon the number of persons picked up. Thus the $.50 charge will be the maximum any given taxicab operator will pay for any given pickup, regardless of the number of passengers picked up. This requirement does not apply to areas outside of the designated Taxicab Pickup Zones or before 7:00 a.m., nor after 11:00 p.m. Furthermore, to insure that the needs of the traveling public will be met regardless of weather or peak demand situations, paragraph (b) provides for the use of a contract concessionaire to be employed only when the demand requires its use. As such, this concessionaire would not be employed to the exclusion of noncontract cabs but only to supplement them as needed.

In addition, the current requirement in paragraph (b) of § 159.3 that the operator of a motor vehicle subject to the requirements of that section must, with respect to passengers to be picked up in response to a prior request, show on his manifest certain information relative to that request, has been deleted in the case of taxicabs operating at Washington National Airport. As adopted, paragraph (b) has been changed to paragraph (c).

A new paragraph (d) has been added to § 159.3, to define "taxicab" as a motor vehicle which has a seating capacity of not more than six passengers in addition to the operator, is operated for the purpose of transporting passengers for hire between points along the public streets as the passengers may direct, and which does not operate on a regular route or schedule, or between fixed terminals.

Since this amendment relates to the management by the Federal Aviation Administration of public lands and relieves an existing restriction, I find that the general notice requirements of Section 553(b) of Title 5, United States Code do not apply and that good cause exists for making it effective in less than 30 days.

This amendment is issued under the authority of Section 2 of the Act of June 29, 1940, as amended (54 Stat. 688); Section 4 of the Second Washington National Airport Act (Title 7, District of Columbia Code 1404); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and Section 1.47(a) of the Regulations of the Secretary (49 CFR 1.47(a)).

In consideration of the foregoing, § 159.3 of the Federal Aviation Regulations is amended, effective January 1, 1974.

rules for persons operating motor vehicles for the purpose of carrying passengers for hire on Washington National Airport (DCA) and Dulles International Airport (IAD).

Interested persons have been afforded an opportunity to participate in the making of this amendment by Notice of Proposed Rulemaking (Notice No. 75–36) issued on October 14, 1975, and published in the Federal Register on October 23, 1975 (40 FR 49577). Due consideration has been given to all comments received in response to the Notice.

Comments received expressed general agreement with the objectives of the proposal. However, several contained suggested revisions. Based on a review of those comments, several minor changes of a clarifying or relaxatory nature have been made.

Proposed §§ 159.2(a) and 159.4(a) would have expressly permitted the delivery of passengers for hire at DCA and IAD. Since the restrictions set forth in those paragraphs are applicable to picking up, rather than delivering, passengers for hire, the provisions applicable to the discharge or delivery of passengers are unnecessary and have been deleted.

Proposed §§ 159.2(b)(3) and 159.4(b)(3) would have required the operator of any for-hire vehicle to obey all lawful directions and signals of dispatchers. While the intent of this provision was to require taxicab operators to obey the lawful directions and signals of taxicab dispatchers, the provision could be construed to require any for-hire operator to comply with directions given by a taxicab dispatcher. Thus, to avoid confusion, that provision, as clarified, has been included in §§ 159.2(c) and 159.4(c) since those sections are applicable to taxicab operations only. In addition, § 159.2(c) has been revised to indicate clearly that a taxicab operator picking tip for hire must accept as passengers those persons, and only those persons, assigned by the dispatcher.

Under proposed § 159.2(d)(3), a taxicab operator would have been required to display a rate schedule issued by the Washington Metropolitan Area Transit Commission (WMATC) and one issued by his licensing jurisdiction. A requirement to display both schedules is unnecessary and could be confusing. A taxicab operator picking up a passenger for hire on DCA must charge the rates prescribed by his licensing jurisdiction if his taxicab has a meter, and he must charge those prescribed by the WMATC for interstate taxicab transportation if his taxicab does not have a meter. Therefore, § 159.2(c)(7) of this amendment requires an operator to display only the rate schedule that he must use.

New § 159.2(c)(9) requires that a taxicab operator charge no more than either the interstate fares prescribed by the WMATC or those prescribed by his licensing jurisdiction, when picking up passengers on DCA and transporting them to points within certain areas. The proposal made reference to areas within or outside the State of Virginia but did not identify the specific areas to which it was intended to apply. For clarity, those areas are identified in § 159.2(c)(9)(i)–(v) of this amendment.

Proposed §§ 159.2(f) and 159.4(d) defined, in part, a taxicab as a motor vehicle having a seating capacity of not more than six passengers in addition to the operator. To make this definition consistent with the WMATC definition of the term "taxicab," this amendment defines such a motor vehicle as one having a seating capacity of not more than eight—rather than six—passengers in addition to the operator.

Several comments dealt with matters considered beyond the scope of Notice 75–36. These included suggestions regarding taxi stands and lanes, bookkeeping, changes to roadways and signs, and fees. These comments are being retained and will be given due consideration, where appropriate, in the event of future rulemaking actions.

Other comments addressed such matters as the placement of meters and licenses in specific locations in a taxicab, fare schedules, use of clean taxicabs, inspection of those vehicles, issuing of receipts to customers, use of direct routes, and the testing of drivers. These matters are among those covered by the taxicab ordinances or laws that have been adopted by the jurisdiction listed in § 159.2(c)(4). The FAA considers those ordinances or laws as adequate for the protection and convenience of airport patrons

are appropriate for consideration at this time. With regard to proposed §§ 159.2(a)(3) and 159.4(a)(3), one commentator suggested revisions to permit other than taxicab operators to pick up in response to a prior request and stated that §§ 159.2(b)(1) and 159.4(b)(1) should be relaxed to permit those operators to solicit passengers. In addition, that commentator questioned the Administrator's authority to prescribe rates. However, others suggested that rates be set for trips to points beyond the WMATC Washington Metropolitan Area Transit District (Metropolitan District) and questioned the Administrator's authority to regulate the solicitation of passengers.

Under the statutory authorities cited herein, the FAA concludes that it has authority to regulate business activities conducted on DCA and IAD and that, based on that authority, it may prohibit the solicitation of passengers and require, as a condition to picking up passengers for hire, that reasonable rates be charged. However, based on past operations, the FAA concludes that it is presently unnecessary to establish rates for transportation to points beyond the WMATC Metropolitan District. The suggestions concerning relaxation of the rules applicable to prearranged pickups and solicitation have been carefully considered, but these rules have been retained as necessary to protect airport patrons and to prevent undue congestion.

With regard to proposed §§ 159.2(c)(1) and 159.4(c), another commentator suggested that taxicab operators be permitted to stand near—rather than remain in—their vehicles while waiting within taxicab pickup zones. However, as explained in the Notice, this provision also is considered necessary to prevent congestion and to discourage the solicitation of passengers. Therefore, it has been adopted as proposed.

Concern regarding the jurisdictions listed in proposed § 159.2(d)(1) was expressed by several commentators. They suggested that the jurisdictions located outside the WMATC Metropolitan District be deleted from that list. Based on its evaluation of these comments and after further consideration, the FAA concludes that it can more effectively control taxicab operations conducted by taxicab operators licensed by jurisdictions within the WMATC Metropolitan District than taxicab operations conducted by operators licensed by jurisdictions that are located outside that district. Therefore, this amendment (§ 159.2(c)(4)) includes only those jurisdictions that are within the Metropolitan District. However, that section can be amended at a later date to include additional jurisdictions, if changed circumstances warrant such a revision.

Taking a different approach, others suggested changing proposed § 159.2(d)(1) to authorize operators of "airport cabs" only, or additional taxicab operators, to pick up for hire on DCA. One commentator contended that taxicab service at that airport should be provided through contractual arrangements and that it should be specifically authorized to pick up for hire on that basis. Another commentator suggested that the Town of Vienna be included among the jurisdictions listed in that section.

In this connection, the FAA wishes to point out that any taxicab operator who complies with the licensing requirements set forth in new § 159.2(c)(4) may pick up persons for hire on DCA. However, the issue of permitting a taxicab operator to pick up for hire on that airport pursuant to a contract with the FAA was not raised in Notice 75–36 and, therefore, is not appropriate for consideration at this time. Such a change, if warranted, could be accomplished at a later date by means of appropriate rulemaking. In addition, the FAA, after investigation, finds that the Town of Vienna issues business licenses to taxicab operators but does not prescribe vehicle safety and appearance standards or fare limitations. Therefore, since one objective of the Notice is to assure, for the protection of airport patrons, that taxicab operators picking up are subject to such standards and limitations, the FAA believes that it would be inappropriate at this time to include the Town of Vienna among the jurisdictions listed in § 159.2(c)(4) of this amendment.

Another commentator suggested that taxicab operators be required to show their licenses to passengers and others. In this connection, it should be noted that under new § 159.2(c)(7), a taxicab operator picking up for hire at DCA is required to display, in a place conspicuous to passengers, his operator's license and rate schedule. An operator at IAD is required by contract to display, in a like manner, his name tag and rate schedule. Under new §§ 159.2(c)(8) and 159.4(b)(4), operators must permit airport police

Finally, one commentator suggested that the requirement concerning licensing of taxicabs and operators be made applicable to taxicab operations at IAD. However, as stated in the Notice, adequate taxicab service is provided at IAD through contractual arrangements. Therefore, the FAA believes that it is unnecessary at this time to establish licensing requirements for taxicab operators picking up persons for hire at that airport.

This amendment is made under the authority of Section 2 of the Act of June 29, 1940, as amended (Administration of Washington National Airport, 54 Stat. 688); Section 4 of the Act of September 7, 1950, as amended (Second Washington Airport Act, 64 Stat. 771); Section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)); and Section 1.47(a) of the Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(a)).

In considering of the foregoing, Part 159 of the Federal Aviation Regulations is amended, effective June 13, 1976.

Amendment 159–16

Distribution of Written or Printed Matter

Adopted: January 12, 1978 **Effective: January 19, 1978**

(Published in 43 FR 2720, January 19, 1978)

SUMMARY: This amendment revokes a provision in the Federal Aviation Regulations that pertains to the posting, distributing, or displaying of written or printed matter on Washington National and Dulles International Airports. This action is necessary since that provision was declared unconstitutional by a Federal court.

FOR FURTHER INFORMATION CONTACT: John C. Curry, Legal Counsel, Metropolitan Washington Airports, Hangar 9, Washington National Airport, Washington, D.C. 20001; telephone (202) 557–8123.

SUPPLEMENTARY INFORMATION: On July 9, 1974, in *Aviation Consumer Action Project* v. *Butterfield,* Civil Action No. 2085–73, the United States District Court for the District of Columbia ruled that § 159.93 of the Federal Aviation Regulations is unconstitutional. The court also enjoined the FAA from applying that section to restrict plaintiff's distribution of information sheets at Washington National and Dulles International Airports. However, it observed that the Administrator could reasonably limit such distribution to remove substantial interference with the operation of those airports.

In light of this decision, the FAA considers it appropriate to revoke § 159.93.

Since this amendment relates to public property, notice and public procedure thereon are not required, and it may be made effective in less than 30 days.

The principal authors of this document are John C. Curry, Metropolitan Washington Airports, and Danvers E. Long, Office of the Chief Counsel.

Accordingly, Part 159 of the Federal Aviation Regulations is amended, effective January 19, 1978, by revoking and reserving § 159.93.

(Sec. 2, Act of June 29, 1940, as amended (Administration of Washington National Airport, 54 Stat. 688); Sec. 4, Act of September 7, 1950, as amended (Second Washington Airport Act, 64 Stat. 771); Sec. 1.47(a), Regulations of the Office of the Secretary of Transportation (49 CFR 1.47(a)).)

(Published in 45 FR 21211, April 1, 1980; Republished Without Change in 45 FR 22014, April 3, 1980)

SUMMARY: Carpools of four or more persons will be permitted to use the Dulles Airport Access Highway during the peak commuter hours. The highway had been restricted to airport traffic only. The following ramps will be open to carpools:

	A.M.	*P.M.*
Reston Ave. Eastbound	6:00–9:00	3:30–7:00
Reston Ave. Westbound	6:00–9:00	3:30–7:00
Trap Road Eastbound	6:00–9:00	Closed
Trap Road Westbound	Closed	4:00–7:00

The hours and 4 person limitation will be strictly enforced by the State of Virginia. FAA is relaxing its restrictions on the Dulles Access Highway in order to promote energy efficient ride sharing.

FOR FURTHER INFORMATION CONTACT: Dexter Davis, Manager Dulles International Airport, P.O. Box 17045, Washington, D.C. 20041, Telephone 471–7596, or Edward Faggen, Legal Counsel, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001, Telephone 557–8123.

SUPPLEMENTARY INFORMATION: The FAA Director of Metropolitan Washington Airports issued a Notice of Proposed Rulemaking on January 9, 1980 (Notice No. 80–1) which was published in the *Federal Register* on January 14, 1980 (45 FR 2661) in which FAA proposed to allow carpools to use the Dulles Airport Access Highway (Access Highway). With certain exceptions, use of the Access Highway is presently restricted to airport users. The proposal was to permit vehicles with four or more persons to have access to the highway in both directions during the peak commuter periods until January 1, 1985. Interested persons have been afforded an opportunity to participate in the making of this final rule. After consideration of comments received in response to the Notice, and after having completed an environmental assessment of the proposal, FAA has determined that the proposed rule should be finalized, as modified below, and made effective.

This amendment is part of the DOT/FAA continuing effort to improve transportation efficiency and to encourage ride sharing and other energy conservation measures. This amendment removes certain restrictions on the use of the Dulles Airport Access Highway and will enhance carpooling as an alternative to the existing modes of transportation for those who commute from or to the Dulles Airport Access Highway corridor.

Discussion of Comments

The FAA received approximately 50 comments predominantly from members of the general public who reside or work in the Access Highway corridor. Several comments were submitted by civic organizations on behalf of large numbers of individuals. Comments were also submitted by representatives of local government and by agencies of the Federal Government. Industry organizations such as the Air Transport Association and the American Motorcycle Association also expressed their views on the opening of the Access Highway to carpools.

Airport Access

The majority of the comments by far were in favor of opening the Access Highway to carpools. However, many of the comments expressed concern or sought clarification about one aspect of the proposal

and was skeptical about FAA's ability to return the road to exclusive airport use.

The FAA's philosophy regarding the Access Highway has not changed. The Dulles Access Highway was built with Federal funds to provide airport users with a free flowing artery to the airport. It was designed to support use of Dulles Airport. The FAA remains committed to preserving the original intent of the Access Highway. The Secretary of Transportation's report to Congress entitled Carpool Access to Dulles Airport Access Road, July, 1979, in which the Department of Transportation recommended opening the Highway to four or more person carpools, clearly acknowledged that free flowing airport access is the overriding purpose of the highway and it recommended that carpools be allowed only until January 1, 1985.

Also, the National Capital Planning Commission specifically endorsed the carpool proposal on the condition that carpool use be terminated in 1985. By that date Dulles Airport traffic is projected to have increased to the point that the carpool and other non-airport users will contribute to congestion on the Access Highway. However, FAA's traffic projections indicate that significant interference to airport patrons will not result before 1985 from implementation of the proposal. FAA's resolve to preserve the Access Highway for its principal purpose was stated in the Notice and is restated here. As congestion increases on the Highway, whether or not it is a result of efforts to promote Dulles Airport, efforts to minimize or eliminate non-airport related traffic will be considered by FAA.

As for informal exemptions, FAA has allowed very few exemptions in the 18 years that the Highway has been open. In addition to carpools, this regulation will give formal recognition to vehicles operated for the purpose of going directly to or from performances of Wolf Trap Farm Park, to buses operated in common carriage for which use of the Access Highway is appropriate, and to buses operated by the Fairfax County School systems.

Enforcement

Several commenters urged that if the carpool proposal is adopted a strong commitment to enforcement is essential to its success. FAA agrees, but has clearly stated from the outset, that enforcement is primarily a local government responsibility inasmuch as local citizens and employees derive the benefit from carpool use. FAA has sought and received the cooperation of the State of Virginia in this regard. FAA and the State have executed a Memorandum of Understanding in which the State has assumed the responsibility for the enforcment of the carpool restrictions. The enforcement plan involves having an attendant on duty on each of the ramps during the carpool operating hours. The attendant will operate the gates to permit entrance to the highway only by vehicles with four or more occupants. State or local police will provide the necessary law enforcement. FAA is taking the necessary steps to confer jurisdiction upon the State to enable the State police to enforce the carpool restriction on the ramps which heretofore have been subject to exclusive Federal jurisdiction. The carpool restriction will be posted on an official sign at the ramps. Violators will be subject to penalty under Virginia Code Sections 46.1–173. A violation is a traffic infraction subject to a fine of not more than one hundred dollars under Virginia code Section 46.1–16.01.

In addition, FAA police will continue to have jurisdiction over these ramp areas. Since this regulation is enacted pursuant to the authority of the FAA granted in the Second Washington Airport Act, 64 Stat 770, violations may be prosecuted as a Federal misdemeanor offense under Section 159.19 and subjected to a fine to be determined by the Federal Court. Operation of a vehicle in violation of an operating sign is also violation of the regulation under section 159.35(c)(6). If violations become excessive, stricter enforcement measures will be taken. If inefficient enforcement of these restrictions occurs which would jeopardize the primary purpose of the Highway, the FAA will have to consider closing it to carpools.

Hours of Operation

A considerable number of commenters requested FAA to modify the proposed hours for carpool access. As proposed in Notice 80–1, the carpools would be allowed to operate between 6:00 a.m. and

The ramps at Trap Road are not expected to generate as much traffic as Reston Avenue. The Trap Road ramps will be opened in the peak direction only. That is, in the morning the westbound exit ramp from the Access Highway onto Trap Road will be closed. The eastbound entrance ramp onto the Highway will be opened to carpools from 6:00–9:00 am. In the afternoon, the eastbound ramp will be closed. Westbound carpool traffic will be able to exit from 4:00–7:00 p.m.

The hours are summarized as follows:

RAMP	*A.M.*	*P.M.*
Reston Ave. Eastbound	6:00–9:00	3:30–7:00
Reston Ave. Westbound	6:00–9:00	3:30–7:00
Trap Road Eastbound	6:00–9:00	Closed
Trap Road Westbound	Closed	4:00–7:00

Furthermore, FAA wants to keep a degree of flexibility in the hours of operation of the ramps. Therefore, the final regulation will not prescribe the hours which would necessitate regulatory action to make even a minor adjustment. Instead, these vehicles may operate in the hours prescribed by the signs posted on the Access Highway. Enforcement action is not dependent on the hours being prescribed by regulations. FAA will, in cooperation with the State of Virginia, see to it that the hours of operation are set forth on a highway sign at each of the ramps. Once posted, the hours will be enforced as any other Access Highway operating sign pursuant to Section 159.35(c)(6). However, the hours of operation may only be changed by order of the Director of the Metropolitan Washington Airports.

Wolf Trap Farm Park

The Department of Interior, National Park Service, which operates Wolf Trap expressed concern about the use of the Trap Road ramps. During the summer months when the park is open, matinee performances are conducted which generate considerable traffic during the early part of the rush hour. To expedite the traffic from the park, Trap Road is operated in a one way mode south from the park towards Access Highway for the time necessary to clear the parking lots. Carpools arriving at the Westbound exit ramp of Trap Road at 4:00 p.m. on the matinee days may encounter delays up to 30 minutes in exiting the ramp.

FAA does not intend to interfere with the efficient operation of Wolf Trap. Neither does FAA believe that carpooling should be disallowed on the westbound Trap Road ramps or that the hours of operation should differ significantly from the other ramps. FAA has discussed the matter with the Park Service and has decided that the Westbound ramp should be available to carpools from 4:00 to 7:00 p.m. in the afternoon, as proposed. Carpoolers are advised that they may encounter significant delays on matinee performance days during the Wolf Trap performance season.

The Park Service's other principal concern is that the parking lots at Wolf Trap might be used by commuters for carpool formation. FAA does not condone or encourage in any way, the use of Wolf Trap parking lots by commuters. However, the park police, as opposed to FAA or State Police, are in the best position to enforce the Park Service parking policies. Should unanticipated conflicts with Park operations arise, further carpool management action may be undertaken in consultation with the National Park Service. Such action could include, if necessary, changing carpool operating hours at Trap Road or closing the Westbound ramp to carpools during the Park season.

"Backtracking"

Backtracking is the term applied to those commuters who enter on the road, proceed west to the Airport only for the purpose of making a U turn and proceeding back to the east. The maneuver evidently results in some time saving for commuters, its circuitous nature notwithstanding. The practice has become

change in the FAA's position on backtracking. Carpooling offers commuters a legal alternative to backtracking and the FAA is hoping that the number of backtrackers will be diminished. This is the only relationship between the carpool proposal and backtracking.

Number of Occupants

A significant percentage of the commenters urged FAA to lower the vehicle occupancy requirement to three or two persons because such carpools are easier to form and could ultimately take more cars off congested alternative routes than four person carpools.

FAA considers it necessary to require carpools to have four or more persons in order to insure the free flow of traffic for airport users. A lower number may indeed attract more cars. It would also create a greater likelihood of congestion and therefore constitute a conflict with the FAA's airport only policy. The four person requirement is consistent with existing and planned carpool strategies for the metropolitan area. Less than four person carpools are not allowed on the I–395 carpool lanes, nor will they be allowed on the I–66 segment inside I–495 the (''Beltway''), nor on the Dulles Access Highway extension to meet I–66 when it is completed. These roads would become overly congested if the four person restrictions were relaxed. When the Access Highway and I–66 are connected, the Access Highway will conform to the traffic restrictions imposed upon I–66 by the Secretary of Transportation. It would not be good transportation policy to provide relaxed carpool requirements for the interim period until the Dulles Access Highway extension and I–66 are completed; this would encourage a commuter practice which will need to be stopped when the new facilities are opened.

Neither does FAA agree with those commenters who urged that carpools be given a pass so that on days when one, or more than one, member is absent, the vehicle and its remaining occupants may continue to use the highway. A pass system, though a convenience for some, is also subject to abuse when absenteeism becomes more the rule than the exception. An increased enforcement effort would be required in order to minimize the violation rate and to be fair to legitimate four-person carpoolers. Neither FAA nor the State is prepared to undertake the administrative tasks associated with issuing passes for the use of the Access Highway and assuring that the passes are not abused.

Motorcycles

Several commenters urged FAA to open the Access Highway to motorcycles on the theory that motorcycles provide an energy efficient form of transportation. FAA, however, is not prepared to allow vehicles onto the Access Highway based upon their passenger miles per gallon of fuel consumed. If it did so, the same rationale would have to be extended to fuel efficient automobiles. The result would be a vehicle access plan that is difficult to administer and one that has a greater potential for adding congestion to the Dulles Airport Access Highway as well as to Reston Avenue and to Trap Road. The Department of Transportation and FAA's efforts are directed at promoting carpooling and ride sharing, and relaxing the restrictions on the Access Highway will achieve these objectives. Allowing motorcycles would not promote these objectives.

Metrorail

One citizen association expressed its opposition to the carpool access until such time as the Metrorail system replaces ''other ground transportation systems'' in the corridor such the proposed Dulles toll road. FAA does not believe that Metrorail is a realistic short-term alternative to promoting carpooling. Metrorail is planned to serve Vienna, Virginia, and will eventually provide a transportation alternative to the automobile and bus in the area. Also, the median strip of the Access Highway is being preserved by FAA for Metrorail in the eventuality that the Washington Metropolitan Area Transit Authority concludes that an extension of Metrorail to Dulles Airport is feasible and prudent. Moreover, while the Department of Transportation is interested in the issue of Metro service to Dulles, that issue is not properly a subject of FAA rulemaking or one exclusively within FAA's authority.

so great as to cause significant delay to airport users. This approach will be beneficial to carpools composed of citizens from Loudoun County and from the Herndon area of Fairfax County.

Implementation at Reston, Virginia

The Reston Community Association and the Reston Commuter Bus (RCB) organization generally endorsed the proposal and submitted a suggestion plan to allow carpools to use the Reston Avenue ramps. These ramps are Federal property but were constructed at the expense of Gulf Reston. They have been used primarily to provide Highway access for Reston's commuter bus service. RCB is concerned that FAA not "arbitrarily assign priority to car and vanpools."

The ramps have served as a convenient transfer point for bus riders and a staging area for the RCB. The compatibility of this practice with automobile use of the ramps concerns the FAA and the State of Virginia from a safety standpoint. Every effort should be made to retain the bus transfer location on the ramps. If that is not tenable, then a location in the immediate vicinity of the ramp will be pursued. FAA and the State have developed a plan for operating the ramp that does not contemplate relocating the bus operation unless operational problems develop that cannot be otherwise resolved. It is currently planned to widen the ramp approximately six feet opposite the bus shelter to allow automobiles to pass the stopped buses. Additional construction and the use of barriers will be considered if found necessary after the ramps are opened. Also, traffic signal lights will be installed at the intersections of the ramps and Reston Avenue. This is expected to moderate the speed of vehicles through the area and safely permit left turns from the westbound exit ramp onto Reston Avenue. After the opening of the ramps, further measures will be taken as needed.

Local Governments and Planning Organizations

Loudoun County and Fairfax County, Virginia have endorsed the proposal. The Council of Governments Transportation Planning Board (COG) and the National Capital Planning Commission (NCPC) have also endorsed the proposal. No opposition has been expressed by any local government or planning agency. NCPC's endorsement was conditioned on development of an acceptable enforcement program, termination of carpool use by January 1, 1985, and development of measures to avoid commuter parking at the Wolf Trap parking lots. The COG staff concurred with NCPC and, in addition, urged completion of the Dulles Access Highway Extension to join I–66.

An adequate enforcement program has been developed by FAA that is in accordance with all of the conditions expressed by NCPC and COG. The FAA does not encourage or condone the use of Wolf Trap for parking and carpool formation. However, enforcement of the no parking restrictions will be the responsibility of National Park Service.

Environmental Assessment

FAA has prepared and circulated for comment an environmental assessment. A number of comments have been received and on the basis of the study and the comments FAA has concluded that the proposal, if implemented, will not have a significant impact on the human environment.

The principal environmental concerns related to continued growth in western Fairfax county and Loudoun County and to the burden imposed on closer in jurisdictions by measures that encourage, rather than discourage, use of the automobile as means of commuting to the District of Columbia.

The FAA, on behalf of the United States, is a significant landowner and employer in western Fairfax and Loudoun Counties. It has an interest in land use and in planning for the areas surrounding Dulles Airport. Also, FAA has an obligation, when considering how to best use the land entrusted to it, to carefully weigh the impacts of its decisions on its neighbor's land. Therefore, in principle, FAA agrees with those comments that stress the complex interrelationship between certain transportation development projects and land development.

in some reduction in congestion in traffic on alternate routes, the reductions are not expected to be great enough to attract any significant growth in the corridor. While home/work trips constitute a large share of the through traffic on Route 7, the transportation problems in northwest Fairfax County frequently surface at times other than carpool peak periods such as on weekends, and holidays. The existence of the carpool access for limited weekday periods is not likely to draw any significant volumes of people to western Fairfax County or Loudoun County that would otherwise not relocate there.

Furthermore, this proposal is not expected to significantly change the volume of traffic passing through Arlington County, Virginia and into the District of Columbia. Any change that there is will be towards the reduction in total vehicle trips. There will be no significant secondary impacts on these areas as a result of this proposal.

Access by Handicapped Persons

FAA was requested by an individual to allow handicapped persons who are not in carpools to commute via the Access Highway. An exemption is not warranted. The purpose of the rule is to promote the use of carpools. An exemption for the commuter who is handicapped does not promote the carpool policy, nor is it consistent with the basic FAA policy on commuter use of the Access Highway. Commuters in private vehicles have not been permitted to use the Access Highway and handicapped individuals have not been exempt. The relaxation of the rule to permit carpools does not change the status of the individual commuter.

Editorial Revisions

The reference to ''trespass'' in section 159.35(a) is deleted as obsolete. Violators of the Access Highway regulation may be charged with a misdemeanor under the Second Washington Airport Act, 64 Stat. 770, and under these regulations, 14 C.FR 159.191. The regulation will state that any person who enters upon the Highway for an unauthorized purpose shall be guilty of a criminal offense and subject to a penalty under these regulations.

Access ''road'' is changed to access ''highway''.

The phrase ''on airport related business'' is added to 159.35(a) to further underscore the original intent of the regulation that private vehicles may enter upon the highway only to travel to the airport on related business, unless one of the exceptions apply.

Termination

The regulation provides that carpool access will terminate on January 1, 1985. The Agreement between the FAA and the State of Virginia Department of Highways and Transportation providing for enforcement and other responsibilities, also expires on January 1, 1985. Termination of that agreement may occur prior to that date: (a) if a highway paralleling the Access Highway is completed by the State of Virginia and is open to the public; (b) if FAA determines that enforcement of the carpool restriction is not effectively achieving a high level of compliance; or (c) if FAA determines that the carpool traffic is interfering with Dulles Airport traffic; (d) if the State of Virginia determines that carpool access should be terminated due to a severe decrease in use, the State's inability to staff the ramps, or similar reason.

Termination of the Agreement with the State may cause FAA to amend its regulations to modify carpool access or prohibit carpool use of the access highway. The State has agreed that termination of the Agreement shall be effective only after public notice and an opportunity to comment. FAA regulations would not be amended without appropriate notice and opportunity for comment.

Effective Date

The rule will be effective upon publication in the Federal Register. Inasmuch as the rule operates to remove a restriction, the requirement for publication of the rule not less than 30 days before its effective date is inapplicable. 5 U.S.C. Section 553(d).

Amendment 159–18

Solicitation and Leafletting Procedures at National and Dulles International Airports

Adopted: May 20, 1980 **Effective: July 28, 1980**

(Published in 45 FR 35306, May 27, 1980)

SUMMARY: This amendment regulates solicitation of funds and distribution of literature by non-profit organizations at National and Dulles Airports. The amendment promotes the efficient use of these facilities and the security of patrons using the terminals without infringing upon the rights of individuals who choose to use the airport for constitutionally protected activity. Title V of Public Law 96–193 enacted February 18, 1980 directed FAA to promulgate regulations to control solicitation activity at Washington National and Dulles Airports.

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SUPPLEMENTAL INFORMATION:

DISCUSSION OF THE FINAL RULE

Background

By a recent legislative enactment, Congress has directed FAA to promulgate regulations to control solicitation activity at Washington National and Dulles Airports. Title V of Public Law 96–193 enacted February 18, 1980 provides:

> Section 501(a) The Administrator of the Federal Aviation Administration (hereinafter referred to as the ''Administrator'') shall, within 90 days after the date of enactment of this Act, promulgate regulations for airports operated by the Administration to regulate the access to public areas by individuals or by religious and nonprofit organizations (as defined in section 501(c)(3) of the Internal Revenue Code of 1954) for the purpose of soliciting funds or distributing materials.
>
> (b) In promulgating regulations under this section the Administrator shall consider requiring any individual or organization described in subsection (a) to submit an application for a permit to engage in the soliciting of funds or the distribution of materials. In considering such an application the Administrator may require that—

(1) a responsible individual representative of the applicant shall be designated to represent the organization;

(2) each individual participating in any solicitation or distribution will display a proper identification approved by the Administrator;

(3) the number of individuals engaged in any solicitation or distribution at any one time shall not exceed a reasonable number, in keeping with the need for free movement in and operation of the airports as provided for by the permit;

(4) the solicitation or distribution be confined to limited areas and times; and

(5) no individual or organization which holds a permit under this section shall be permitted to—

(A) use sound amplification or display signs (other than signs approved by the Administrator);

approved under this section should occur for any violation of any rule or regulation promulgated hereunder.

(d) Regulations intended to be promulgated under this section shall be submitted to Congress within 30 days after the date of enactment of this Act.

In recent years it has become a common practice for various religious and non-profit organizations to use commercial airports as a forum for the distribution of literature, the solicitation of funds, the proselytizing of new members, and other similar activities. Washington National and Dulles International Airports are no exception to this trend. The airports are owned by the United States Government and large portions of the airport buildings were designed for and are open to the general public. Last year more than 18 million passengers passed through the terminal buildings on their way to and from air transportation. There is a considerable amount of social and commercial interchange in the terminals and, in many respects, the terminals are like any other public thoroughfare where there is no question that the Constitutional guarantees of freedom of speech, the exercise of religion and the right to peaceable assembly apply. These activities enjoy the protection of the First Amendment, and they may not be regulated by airport authorities in the same manner as commercial activity.

However, the absence of regulation has led to situations where those soliciting money or leafletting have caused or contributed to congestion in the terminals and obstruction of travelers. At National Airport, and at Dulles Airport during the peak hours of operation, the airport terminals, sidewalks and passageways are extremely congested. At National the design capacity of the terminal is greatly exceeded on a daily basis. When congestion occurs at or near points where the free flow of traffic is essential to the airport's operation, the congestion causes inconvenience to the traveling public and an interference with efficient airport operation.

Currently, there is no regulation that even limits the number of solicitors or leaflettors at the ticket counters, baggage claim areas and other areas where travelers must attend to the business which brought them to the airport. Nor is there any prohibition on the places where soliciting or leafletting activity could occur, such as near the top of staircases or escalators, at restroom entrances, doorways and other areas where such activity causes unsafe conditions as well as inefficient airport operation. Furthermore, there is no regulation which prohibits solicitation or leafletting from travelers who are in line or otherwise conducting their business at the airport. Finally, there is no requirement that solicitors identify themselves to the airport officials and to the public or that he or she indicate that he/she has the authority to represent the cause for which money is sought.

Another disturbing aspect of soliciting funds in the terminals has become apparent to FAA. Numerous written complaints have been received by the FAA concerning incidents in which airport patrons or tenants have allegedly been subjected to fraud, harassment, verbal abuse, intimidation and embarrassment. People standing in line or otherwise waiting to conduct their business at the airport find this activity to be particularly objectionable because they cannot avoid the solicitor by choosing to forego their purpose for being at the airport. Therefore, they may constitute a captive audience to behavior they find objectionable. On the other hand, there have been complaints to FAA by representatives of groups peaceably soliciting funds. They claim to have been harassed by employees or others using the airport. There have been several instances of assault or alleged assault and there have been complaints against alleged deceptive practices of solicitors who intentionally conceal their organization's identity or fail to make change to a contributor promptly or accurately.

As proprietor of the Airport, FAA has the authority to prescribe rules of conduct to protect airport patrons and efficient operations of the airport. The FAA's authority to operate National and Dulles Airports is broad. Congress has charged FAA with "the control over and the responsibility for, the care, operation, maintenance, improvement and protection of the airport," together with the powers to make and amend rules and regulations as are necessary to the proper exercise of this control and responsibility (54 Stat. 688; 64 Stat. 771). The FAA has, by regulation, exercised control over all commercial activity that occurs at the Metropolitan Washington Airports. No business is conducted, including advertising, or space leased except upon the terms and conditions prescribed by the Director of Metropolitan Washington

Although the FAA has possessed the authority, its regulations of "conduct" on the airport have not been addressed in any detail to the solicitation of funds or the distribution of literature on the airport by individuals or organizations acting in a noncommercial capacity. The number of solicitors on the airport, the locations within the terminals, and the manner in which they solicit money from the traveling public have not been regulated by the FAA. The existing regulation, 14 CFR 159.91(b) merely proscribes the "solicitation of aims" without the permission of the Airport Manager. This is deemed inadequate to meet the standards of the First Amendment.

In view of the congestion and other operational problems, the repeated incidents in the terminals, the legislative expression of concern and the mandate to FAA to regulate the access to public areas by individuals or organizations for the purpose of soliciting funds or distributing literature, FAA has decided to establish this regulation. Under the regulation a reasonable limitation is placed on the time, place and manner of soliciting and leafletting in the National and Dulles Airport Terminals.

FAA recognizes that the soliciting of funds for religious purposes and the distribution of literature are protected under the First Amendment of the Constitution. In the area of First Amendment freedoms, including the constitutionally protected forms of solicitation, the touchstone of regulation must be precision. Regulations will not offend the Constitution if they regulate only the time, place and manner of expression, are narrowly drawn to protect only a compelling governmental interest, and are not subject to the discretionary administration by officials. Any procedure which allows the airport officials wide, unbounded discretion in granting or denying permits is constitutionally questionable, because it would permit the airport to base its determination on the content of the ideas sought to be expressed.

FAA has no interest in regulating the ideas disseminated at the airport, and has no intention of regulating based on the content of the message or the cause that a solicitor supports. Also FAA has no intention of regulating in such a way as to relegate solicitors to a corner or to areas or to times of day that would deny them access to the great majority of airport users.

FAA is concerned, first, what the number of solicitors or distributors of literature not exceed a number which would aggravate existing congestion, and that such activity not be conducted at points in the terminal that are critical to airport efficiency and safety or within areas leased for the quiet enjoyment of an airport tenant. Second, FAA is concerned that those who solicit money or distribute literature in the terminal not do so for commercial purposes. It is essential to proper airport administration and operation that business activities be conducted on the airports only with the permission of the airport managers. Third, FAA expects those who solicit money from the public for noncommercial purposes to identify themselves and their cause, not for approval by the FAA but rather to provide the public this minimal assurance that it will know who is soliciting and why. Fourth, as the entity responsible for public health and welfare on the airports, FAA expects solicitors not to engage in particularly offensive, deceptive, or otherwise egregious activity. These are the legitimate, compelling proprietary and governmental interests that FAA seeks to protect by regulation. The FAA intends to impose only the least restrictive regulation on constitutionally protected activities that is necessary to protect these interests.

With this as its objective, FAA has identified those points on the airport that are critical to efficient and safe operation. These are the ticket counters, baggage claim areas, departure check in counters, departure gate lounge, anti-hijack security screening points, restroom facilities, staircases, escalators, elevators, doorways or entrance ways, and points where motor vehicles load or unload occupants and baggage. This regulation prohibits solicitation and distribution of literature within ten feet of these precisely identifiable points and from the people waiting in line to conduct business at these points. Ten feet is a readily identifiable standard, and provides the maximum freedom of movement to leaflettors and solicitors consistent with the rights of others using the airports. This regulation also prohibits leafletting and solicitation in premises leased for the exclusive use of a concessionaire.

This leaves large portions of the public lobbies and lounges, through which virtually all users of the airport pass, available to solicitors and leaflettors. FAA commissioned a study of the pedestrian

peak levels. The analysis of the data was accomplished in two stages. First, standard air terminal planning factors were applied to figures representing the size of terminal facilities (e.g., linear feet of ticket counter) and the mean traffic flow past each facility. The result is a distance in feet from each such facility required for minimally adequate public access to that facility. From these figures, a diagram of each major terminal area was developed, indicating area in which solicitation could be conducted with the least disruption of public business and travel. Second, the effect of introducing various numbers of solicitors into these open areas was calculated. This analysis identified the number of solicitors who could be accommodated in each area without an unacceptable level of obstruction to the flow of terminal traffic.

The study referred to *Pedestrian Planning and Design,* by John J. Fruin, a standard reference for public walkway planning. Fruin divides pedestrian flow into six categories or levels of service, A through F. Using this scale during peak hours the level of service at National is C (15–25 square feet per person), and at Dulles is D (10–15 square feet per person). This means that there is a high probability of conflict in moving requiring frequent adjustment of speed and direction to avoid contact (C level of Service). The D level severely restricts movement and there is multiple conflicting movements. FAA will allow the highest number of solicitors without lowering the level of service to D and E.

The consultant's recommendations concerning the areas in which soliciting and leafletting should be permitted, and the number of permits to be issued for those activities, are incorporated in the proposed regulation, with one exception. The study results indicated that no solicitation should be permitted in the National Airport main terminal concourse. This is a heavily trafficked area and the area most frequently used by solicitors. In the interest of permitting some level of solicitation in this area, FAA has designated a maximum of two solicitors to be allowed in a certain portion of the area. The FAA will monitor this activity and should it present an unacceptable obstacle to traffic matters, FAA will propose to modify the regulation.

At Dulles Airport a limited number of permits (7) will be issued only between 4:00 p.m. and 8:00 pm. each day, in view of the marked peaking characteristics of traffic at that terminal. Area and numerical restrictions are inapplicable at all other times, although the permit requirements described below will apply at all times.

Each person conducting leafletting and soliciting activity will be required to obtain and display a permit. The standards for issuing such permits shall be simple and objective. Airport officials will not have the discretion to deny a permit to those who are soliciting for non-commercial purposes or distributing literature of any non-commercial nature, except in precisely defined situations.

Permit systems that protect a legitimate governmental interest, and which are administered in accordance with narrowly drawn, precise and objective standards, are clearly allowable. The Supreme Court has stated that without doubt government "may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause he purports to represent. The State is likewise free to regulate the time and manner of solicitation generally, the interest of public safety, peace, comfort or convenience." (*Cantwell* v. *Connecticut,* 310 U.S. 296, 306, 1940).

Under the proposal a permit will be issued by Airport Management immediately upon completion of the application provided that all available permits have not been distributed to other applicants. Permits will be issued on a first come/first serve basis. Permits will be good for two days to assure an adequate turnover in the permits while not limiting the holder to what may be an unduly brief authorization. Daily permits are administratively burdensome to the Airport personnel. Conversely, issuing permits with overly long duration may result in perpetuating certain groups of solicitors and unreasonably excluding others.

An application for a permit to distribute written or printed matter without charge or without otherwise soliciting funds, will require only the applicant's oral request for a leafletting permit.

political, or charitable or public interest organization. If the applicant claims that the organization is either religious or political in nature, a statement to that effect, and nothing more, will be required. Applicants to solicit on behalf of charitable, scientific, educational or other public interest organizations will be required to submit a statement that the Internal Revenue Service has determined the organization to be eligible for tax-exempt status under 26 U.S.C.A. Sections 501(c)(3), (c)(4) or (c)(5). Applicants for organizations which have an application for such status pending may, alternatively, submit a statement to that effect. Section 501(c)(3) addresses the tax-exempt status of religious, educational, charitable, scientific, testing for public safety, fostering of certain amateur sports competition, and prevention of cruelty to children or animals organizations. Section 501(c)(4) pertains to civic leagues, social welfare organizations, and local associations of employees. Section 501(c)(5) covers labor, agricultural, and horticultural organizations.

Regulation of charitable solicitation at the airports for the protection of the public is well within FAA's regulatory and police powers. The IRS determination of tax-exempt status is used only because it constitutes an objective determination of whether an organization is commercial or non-commercial, i.e., whether or not the organization primarily benefits a charitable or public interest which is different from that of the organization's owners and management. The determination is easy to obtain if the organization has not already done so, and is minimally restrictive. (More than 200,000 organizations qualified for Section 501(c)(3) status alone as of October 1978.) Additionally, the determination provides an objective criterion for issuance of a solicitation permit by airport officials on a ministerial, non-discretionary basis. Similar documentation is not required of religious or political organizations in consideration of the special constitutional deference to such activities, particularly religious solicitation, and the absence of appropriate documentation for political organizations.

Alternatively, an applicant representing a charitable organization may submit a statement that the organization is registered with the Virginia Administrator of Consumer Affairs in accordance with Section 57–49, Virginia Annotated Code (1978 Cumulative Supplement), ''Registration of Charitable Organizations''.

Comments Received

FAA received 15 comments on the NPRM (45 FR 20424). The proposal was favored by the individual air carriers who commented and by the Air Transport Association. While expressing support for the proposal, these commenters favored additional or more stringent requirements on solicitors and leaflettors. It was suggested that non-commercial activity be prohibited within 15 feet, not 10 feet as proposed, from critical points at the airport and lines at these points, that the regulations clarify the rights of tenants to regulate access to those areas under their exclusive control, and that solicitors pay a space rental and clean up fees the same as any business on the airports. Individuals, presumably travelers who use the airports, commented in favor of the proposal expressing the views that solicitors are ''a nuisance and an aggravation to travelers.''

Comments were received from organizations who regularly solicit for money at airports and from organizations concerned about the preservation of civil liberties. Many of these comments focused on significant constitutional issues raised by the FAA's proposal. While their comments were critical of various aspects of the proposal, several commenters acknowledged that FAA drafted the NPRM with careful attention to the First Amendment rights of individuals. The comments received have been helpful and the legal issues raised by the comments have prompted further revisions to the proposal, as discussed below.

In the final rule the FAA has endeavored to be attentive to the First Amendment rights of individuals who use the airports as a forum for the expression of ideas and solicitation of funds as well as responsive to its duties as the airport proprietor.

As proposed in the NPRM § 159.93(b)(1) requires each person conducting "noncommercial activity" to hold a permit issued by the Airport Manager. Non-commercial activity was defined as "the following activity:

1. The distribution of printed matter to the general public, and

2. The solicitation of funds from the general public, undertaken not for profit but for *philanthropic, religious, charitable, benevolent, humane, public interest* or similar purposes."

No definition was provided for the underscored phrases. One commenter believes these phrases to be vague. FAA did not intend these phrases to be a limitation on who can conduct non-commercial activity on the airport. These phrases were used to better convey the difference between the commercial and non-commercial activity. For regulatory purposes the clearest definition of non-commercial activity, in view of the definition of commercial activity, is simply activity undertaken not for profit. This definition is adopted and the *underscored* phrases are not in the final regulation.

Another aspect of the proposed non-commercial activity definition that was criticized as constitutionally infirm is the provisions in § 159.93(a)(1):

> *provided,* that if written or printed matter is for sale on the airport by a commercial vendor, its sale by any person will be treated as a "commercial activity".

This proposal was designed to protect vendors who pay for the privileges of selling printed matter at the airport from the competition by those who would sell printed matter, but have no overhead costs to the airport. Several commenters objected to protection of commercial facilities by imposing a restriction on the sale of religious non-commercial printed matter. Furthermore, the regulation creates a situation by which airport concessionaires could legally prevent non-commercial distribution of printed matter merely by placing that same literature for sale in their concessions. Because of these concerns, on balance, there is not at present a sufficiently compelling interest to warrant the promulgation of this aspect of the regulation. Therefore, the portion of § 159.93(a)(1) quoted above will not be adopted in the final regulation.

The portion of § 159.93(a)(1) that makes the distribution of items or material other than printed matter a commercial activity will be adopted as proposed. This is not adopted to protect concessionaires but to provide airport management with control over the sale of trinkets, candies, and other such items in the terminal. Such items have no inherent message value and their sale or distribution does present airport management with litter and space utilization problems. FAA believes that it has a legitimate and compelling proprietary interest in determining where and what kind of trafficking of goods occurs on the airport.

Permit System

One commenter expressed as a general rule that no license or permits should be required at all for leafletting or solicitation of funds, and the mere fact that such activities may contribute to congestion of public areas is not a sufficient reason to justify such a requirement.

FAA respectfully disagrees. It has a statutory duty to maintain and operate the airports. Furthermore, FAA has the right to impose reasonable time, place and manner restrictions on the exercise of leafletting and soliciting activity in the airports if this would further a compelling governmental interest. The interests in this case, as stated in the NPRM, include a concern that the number of solicitors or distributors not exceed a number which would aggravate the already existing serious congestion at the airport. The purpose for which the terminal was built and maintained is to process and serve air travelers efficiently. FAA has studied the flow of traffic through the airport terminals. We employed traditional airport terminal planning factors, i.e., factors used to judge the efficiency of how terminal space serves the number of users. These planning factors have been used consistently for National and Dulles Airports and were not newly created for this study of passenger flow. The resulting study shows a clear need to limit

"Identification and fees of reprisal might deter perfectly peaceful discussions of public matters of importance particularly where door to door solicitation seeks discussions of sensitive and controversial ideas 367 U.S. at 625.

FAA believes that where no money is sought from the public, interests are served by merely requiring a permit so that the number of distributors and places of distribution may be regulated. There is, however, no compelling need for the leaflettor to identify himself/herself. The permit will be marked as one for distribution, not sale, of noncommercial printed matter.

One commenter expressed concern that some applicants might freeze out other applicants for an entire week by applying for a permit to exclude others. Because the FAA was concerned about the burden on applicants to apply for a daily permit, the NPRM proposed the permit last for seven days. To prevent undue monopoly of the permits, the FAA accordingly changes the duration of the permit to two days. Because of the shorter duration, assuring a greater turnover rate, there will be protection against monopolizing permits. Furthermore, the twenty-four hour waiting period to reapply is deleted, as it is no longer needed because of the greater turnover rate.

One commenter expressed disagreement with the "first come, first serve" procedure for issuing permits. The commenter stated that this procedure is too competitive. The FAA believes the "first come, first serve" rule is the fairest approach in issuing a permit. This procedure excludes any discretion on the part of FAA to pick and choose which groups or individuals will be issued a permit first.

In one important respect several commentors misunderstood the powers and remedies available to the FAA under the regulation to deny or revoke permits. A permit will be issued upon completion of the application form. In deference to the rights protected by the constitution, there is no provision in the regulation for denial of a permit on the basis of suspected, false statements in the application. Nor is there any provision for revocation of a permit already issued, for any reason. For example, § 159.94(b), which makes it illegal to solicit under a permit issued in response to an intentionally false application, has no effect on the permit issuance process other than deterrence of false representations. In the event of a suspected violation of this provision, or of any other provision of § 159.94, the actions available to the FAA are, first, the prosecution of the individual for violation of airport regulations, violation of which is a misdemeanor or second, the seeking of a District Court injunction against further solicitations by the individual at the airports. Either alternative requires judicial review of the case initiated by the FAA, clearly assuring due process to the individual concerned.

Solicitors

Two commentors contend that FAA should not even require a solicitor who solicits on behalf of an organization to provide documentation to that effect. They believe that it would be less restrictive for the person simply to state the name of the group he or she claims to represent. We do not agree. FAA believes that organizations sending a representative to solicit on their behalf will willingly, and can reasonably be required to, document this representation with a simple letter. Such a minimal requirement is hardly burdensome. It would seem to be more, not less objectionable if FAA were to "investigate" and make its own determination of whether an individual represents an organization as claimed. FAA does not believe it is appropriate that it engage in this type of extended investigative activity.

The proposed regulation requires the name of the applicant's supervisor responsible for the applicant's activity at the airports. This is attacked as vague. FAA disagrees. The requirement simply and clearly calls for the name of someone in charge of the solicitor at the airport. However, in recognition that in some instances there may not be a supervisor, the regulation as proposed is amended to specify "if applicable". An applicant for a permit will not be denied a permit on the basis of the failure to provide this name.

espoused charity, and whether it may require documentation that the organization is a charity before the individual is allowed to solicit funds on the airport.

In *Schaumberg,* the Supreme Court struck down a prohibition against soliciting for a charitable organization if more than 25% of the receipts of that organization are used on fund raising salaries and overhead. The Court found this standard unconstitutionally overboard, in that it grouped legitimate charitable organizations engaged primarily in research, advocacy, or public education with those that are in fact using the charitable label as a cloak for profitmaking. The Court, however, did not foreclose any inquiry into whether an organization is a charity, and indeed noted the failure of the Village to employ more precise measures to separate one group from the other. The Court further implied that an organization's eligibility for tax exempt status under federal law could he determinative of its eligibility for preferred constitutional status in its fund raising efforts. Attainment of such tax exempt status is at least verifiable. This verification is what FAA sought to obtain in proposed § 159.93(e)(E)(iii) which required a copy of an official Internal Revenue Service ruling or letter stating that the applicant's organization or its parent organization qualifies for tax exempt status under 26 U.S.C. 501(c)(3), (c)(4) or (c)(5).

FAA believes that if there is a reasonable means of verifying the representations made by a solicitor those means should be used. Two commenters state that while a tax exempt status might be useful in determining who is a charitable group, this is a different question from whether applicants should be required to provide evidence of that status to airport officials. In view of this concern that the documentation is burdensome on the applicant, FAA has reconsidered the requirement. In lieu of documentation FAA will require only that the applicant state if his or her organization has received an IRS determination for exempt status under Section 501(c)(3), (c)(4), or (c)(5), or has an application for such status pending. No further evidence will be required. FAA may, if it chooses, make further inquiry with IRS as to the currency or accuracy of the applicant's statement.

FAA is also revising the final regulation to take into account recent legislation on the registration of charitable organizations in the State of Virginia, in which both airports are located. The State of Virginia requires that every charitable organization, except as exempted, which intends to solicit contributions within the Commonwealth, or have funds solicited on its behalf, shall, prior to any solicitation, file a registration statement with the Administrator of Consumer Affairs, VA. Code 57–49. Evidence that an organization is currently registered as a charity in Virginia will suffice as a means of verifying to FAA that the organization is a charity, for purposes of solicitation at the airports. Applicants may use either the Virginia registration or the IRS tax-exempt status at their choosing.

Political Organizations

Two commenters believe that the definition of a political organization in § 159.93(c)(2)(E)(ii) is too restrictive, and would not include groups that advocate positions on matters of public concern but work for political causes unrelated to elections or legislation. FAA does not intend to be restrictive in this definition. Advocacy groups such as those protected by the *Village of Schaumberg* have been added to the definition in the final rule.

Traffic Flow Study

Several comments were critical of the traffic flow study done for the FAA by a planning consultant firm. Two commenters attacked as unconstitutional an assumption that solicitation would not be allowed in the public waiting areas or seating lounges based on a captive audience theory. FAA believes that the assumption is reasonable. Persons in the lounges of course can get up and move away to avoid a solicitor. However, FAA does not believe that there is any justification for disrupting the seating lounge by creating a situation where the air traveler has to move away from unwanted solicitation. The solicitors have access to these persons as they enter or leave the seating lounges.

Furthermore, these seating areas are not areas where pedestrian traffic flows and therefore they are properly excluded from any calculation of the impact of non-commercial activity on such flow. Thus, even if solicitation were permitted in the seating area, that area would not have been added into the

Analysis was then performed to determine if the addition of a number of solicitors or leaflettors would further reduce these existing levels. FAA will permit the highest number of solicitors that would not result in a reduction in the present service level. The FAA does not believe that either of the present service levels at National or Dulles should be lowered to the next lowest level by increasing the number of solicitors beyond the number in the final rule. Such an action would not be consistent with the proper exercise of the FAA's statutory responsibilities at the Airport.

Prohibitions and Penalties

Several commenters expressed concern that the prohibition against behavior which "embarrasses" or "ridicules" airport patrons is vague and overly broad. The FAA agrees, and therefore, has omitted the words "embarrass" and "ridicule" from the NPRM section on prohibited acts. (§ 159.94,f)

The proposed penalty provision, § 159.191(c), which provided that any person wilfully violating the solicitation regulation shall be prohibited from engaging in non-commercial activity at the airport for not more than six months, was criticized as being unlawful prior restraint on protected First Amendment rights. This amendment merely intended to notify violators that such a restriction may be imposed. It was not intended to arrogate this authority to the FAA or airport management. Violators of any airport regulations are guilty of a misdemeanor which is punishable by up to six months in prison. In lieu of a jail sentence, the courts already possess the authority to require a convicted person to not conduct such activity on the airports. The penalty, like others, can only be imposed by a court of law after due process to the accused. Because FAA recognizes that the court already has this authority, the final rule has been modified by deleting § 159.191(c).

Comments Supporting Broader Regulation of Solicitors and Leaflettors

One commenting airline company supported the proposed rule, but contended that the main terminal concourse was not large enough to accommodate even two solicitors or leaflettors as proposed. The terminal traffic study used by FAA in development of the regulation also indicated that any solicitors in the main terminal would cause unacceptable interference with traffic flow. However, FAA will continue to allow two solicitors in this area in the interest of accommodating First Amendment activities to the maximum extent consistent with the terminal's function. The FAA will monitor this activity and should it present an unacceptable obstacle to traffic patterns, FAA is prepared to modify the regulation.

Another commenting airline company recommended that only one solicitor be permitted in each terminal complex. FAA has, however, followed the recommendations of its passenger study on this point, and permitted more solicitors where indicated. The commenter further recommended that soliciting organizations be required to lease space, as a business would be required to do, and to publish income and expenditure statements. While FAA can appreciate the concern of airport businesses that solicitors can use the airports without cost for fund-raising purposes, FAA recognizes that it is the solicitor's right to do so. On the second point, any benefits which would be realized by a financial disclosure requirement are already obtained, to the extent necessary, by reference to the IRS determination and Virginia Consumer Affairs registration. Therefore no such disclosure requirement has been included in the final rule.

The Air Transport Association of America (ATA), of which 16 incumbent carriers at the airports are members, generally supported the proposed regulations as directly related to the promotion of safety and the reduction of burdens for air travelers. ATA recommended several amendments to the proposed rule including, first, an increase in the minimum distance specified in § 159.94(d) from 10 feet to 15 feet. However, maintaining a 10 foot distance from the critical points on the airport and persons in line at these points is sufficient to prevent the interference with the operation of these areas. The 10 foot distance is also not unduly restrictive on the solicitors and is retained in the final rule. ATA also recommended that applicants for leafletting permits be required to provide the same information as for solicitation permits. For reasons discussed above, however, FAA has deleted all information requirements for leaflettors.

permits for Dulles be limited continuously as at National, rather than at specific hours. FAA believes the lack of congestion at Dulles during off-peak hours precludes the necessity for limiting the number of solicitors at all times. Second, ATA recommends that FAA retain the authority to impose a total ban on solicitation during heavy traffic or emergency periods, such as Thanksgiving and Christmas holidays, or heavy snow conditions. FAA does not believe that this action is necessary in light of the general constitutional protection of peak-hour solicitation, when access to the public is most effective. In genuine emergency situations FAA is confident that its existing police powers are sufficient to take all actions reasonably necessary.

The Final Rule

The Federal Aviation Administration hereby amends Subpart D, "Rules of Conduct," of Part 159 of the Federal Aviation Regulations (14 CFR Part 159).

NOTE: The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is judged to be minimal and a detailed evaluation is not required.

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655); Sec. 501 of P.L. 96–193, February 18, 1980.)

Amendment 159–19

Solicitation and Leafletting Procedures at National and Dulles International Airports Deferral of Effective Date

Adopted: July 24, 1980 **Effective: July 25, 1980**

(Published in 45 FR 49917, July 28, 1980)

SUMMARY: In 45 FR 35314–35321, May 27, 1980, FAA amended the regulations pertaining to National Capital Airports to provide for the regulation of charitable, religious, and political leafletting and soliciting at National and Dulles Airports, in accordance with Title V of Public Law 96–193 enacted February 18, 1980. The effective date of the final rule was established as July 28, 1980. This amendment defers the effective date to October 26, 1980.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Legal Counsel, AMA–7, Washington National Airport, Hangar 9, Washington, D.C. 20001. Telephone No. (703) 557–8123

SUPPLEMENTARY INFORMATION: The final rule, issued on May 20, 1980, incorporated several significant modifications of the rule proposed in the NPRM (45 FR 20424). Based upon an estimate of the time necessary to complete administrative requirements associated with implementation of the final rule, the effective date established for the final rule was July 28, 1980.

Administrative approvals required included those under the Federal Reports Act (44 U.S.C. § 3501 *et seq.*) and the Privacy Act (5 U.S.C. § 552a). The processes for obtaining approval were initiated after issuance of the final rule due to the substantial notifications which were made to the proposed rule in response to public comments. It is now apparent that the agency will not get the necessary approval required under the Federal Reports Act and meet all of the technical requirements of the Privacy

compliance with all administrative requirements associated with implementation of Part 159 as amended.

Amendment to the final rule:

In the final rule (FR Doc. 80–15968) published on May 27, 1980, (45 FR 35314), the effective date is hereby changed to October 26, 1980.

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); Sec. 6, Department of Transportation Act (29 U.S.C. 1655); Sec. 501 of P.L. 96–193, February 18, 1980.)

Note.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The economic impact of the proposal is judged to be minimal and a detailed evaluation is not required.

Amendment 159–20

Metropolitan Washington Airports

Adopted: September 15, 1980 **Effective: January 5, 1981**

(Published in 45 FR 62406, September 18, 1980)

SUMMARY: The FAA is adopting rules to implement the DOT/FAA policy to guide the future operation and development of Washington National Airport and Dulles International Airport and to improve the quality of the environment in the area around National. The policy announced by the Secretary of Transportation is published elsewhere in this FEDERAL REGISTER (45 FR 62398, 9/18/80). The FAA is changing the hourly allocation of operations at National from the present 40 per hour for air carriers, 8 for commuter air carriers and 12 for general aviation, to 36 scheduled operations per hour for the certificated air carriers, 12 for commuter air carriers and 12 for general aviation. Also, the users of the two air carrier classes will be defined by the maximum certificated passenger capacity of the aircraft used. Aircraft with a maximum certificated passenger capacity of less than 56 are required to be used in commuter air carrier slots. Aircraft with maximum of 56 or more passengers are required to use certificated air carrier slots.

At National, the certificated and commuter air carriers are permitted to schedule operations between 7:00 a.m. and 9:30 p.m. No aircraft can takeoff after 10:30 p.m. regardless of when the operation was scheduled. No aircraft may land after 11:00 p.m. regardless of when it was scheduled.

Two- and three-engine widebody aircraft are permitted to use National Airport subject to a determination by the airport management that their operation is compatible with airport facilities.

Nonstop service is to be permitted from National Airport to points up to 1,000 statute miles without exception.

FOR FURTHER INFORMATION CONTACT: Edward Faggen, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001, Telephone No. (703) 557–8123. or Charles C. Erhard, Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001, Telephone No. (703) 557–0972.

to the hours of operation, scheduling hours, nonstop service and aircraft type restrictions at National Airport.

Interested persons were invited to participate in the making of the policy and these rules by Notices published January 21, 1980 (Notice 80–2, 45 FR 4314; Notice of Proposed Policy, 45 FR 4320). Written comments were received from citizens residing near the airport, local municipal and county governments, cities served or desiring service into National, and the air carrier and general aviation industries. In addition, FAA heard the views of more than 100 citizens at three public hearings. Many of the speakers represented large organizations of citizens or airport users.

In January FAA also issued a supplement to the Draft Environmental Impact Statement (DEIS) which had been issued in March 1978. Comments were requested on the Supplemental EIS.

The comments received on the policy, the proposed regulations and the EIS were placed in the same public rules docket. Comments relating to the rules and the EIS were largely subsumed by the comments on the policy. The issues raised by the comments were therefore addressed in the Secretary's policy decision, which appears elsewhere in this FEDERAL REGISTER. In addition, the comments on the EIS were addressed in the Final Impact Statement issued and filed with the Environmental Protection Agency on August 15. That EIS assessed five policy options ranging from a significant reduction in activity at National Airport to an expanded role for the airport. The impacts of the policy adopted by the Department and implemented by these rules are in the mid-range of impacts described for limiting the passenger activity at National to 16 and 18 million passengers per year. The Final EIS may be obtained from Mr. Charles C. Erhard at the address listed under "For Further Information Contact." Reference should be made to those documents for the disposition of comments.

The policy adopted by the Department of Transportation for the Metropolitan Washington Airports is as follows:

1. *Growth Limitation at National*

Washington National Airport will not be permitted to accommodate more than 17,000,000 total passengers per year. That level will be maintained by periodically adjusting the numbers of slots available to scheduled certificated air carriers.

2. *Operating Hours*

The hours of operation at Washington National Airport will be modified to provide that no airline or commuter activity may be scheduled between the hours of 9:30 p.m. and 7 a.m. Additionally, a curfew will be in force on aircraft departures between the hours of 10:30 p.m. and 7 a.m. Similarly, there will be a curfew on aircraft arrivals between the hours of 11 p.m. and 7 a.m.

FAA will determine if a noise level limitation in lieu of an absolute curfew can be adopted consistent with the objective of maintaining a quiet nighttime environment. If the FAA determines that a noise level limitation is appropriate a separate rulemaking action will be initiated.

3. *Slot Availability to Various User Classes*

"Air carrier" slots will have to be used by all carriers (both airlines and commuters) utilizing aircraft of 56 or more passengers seats, while "commuter" slots will have to be used for all carriers utilizing aircraft with less than 56 seats.

4. *Use of Widebody Aircraft at National*

The policy constraints on the use of 2- and 3-engine widebody aircraft at Washington National will be removed. Prior to the use of any such aircraft at National, the operators of such aircraft must:

- Satisfy whatever remaining requirements the FAA decides are appropriate to establish that the use of such aircraft are operationally feasible.

- Secure the concurrence of the Director of FAA's Metropolitan Washington Airports that the use of such aircraft are compatible with that operator's apron and terminal facilities and with the airport's other terminal and roadway capabilities.

5. *Nonstop Perimeter at National*

The nonstop service perimeter for Washington National is established at 1,000 statute miles, with no exceptions.

6. Improvement of Washington National

The Federal Aviation Administration will immediately undertake a program to Master Plan a physical redevelopment of Washington National Airport and will then proceed with such a redevelopment program. This program will emphasize public transit to and from the airport, including a suitable relationship between the airline terminals and the Metrorail system.

7. *The Role of Dulles*

Dulles International Airport will continue to provide all types of aviation services to the Washington area, with a priority given to commercial air transportation service. Capacity of Dulles will continue to be added as necessary. The Dulles Airport Access Highway will continue as an "Airport traffic only" facility, with the several exceptions currently in force. Additional access improvements to Dulles, particularly those oriented to public transit modes, will be pursued.

As a result of the comments received, two principal modifications to the policy as proposed last January have been made. First, the passenger ceiling has been reduced from 18 million to 17 million annual passengers. This ceiling will permit sufficient time for a slowing down and an eventual halt in the growth of National Airport's passenger activity. The cap will be reached, it is estimated, in 1983 instead of 1985. Additional rulemaking will be necessary to establish a mechanism for adjusting the number of slots to assure that the number of passengers served at National does not exceed 17 million. For the purposes of this rule, total passengers, enplaned and deplaned, by commuter and certificated air carriers as well as general aviation will be subject to the ceiling.

The other principal change from the policy as proposed relates to the curfew. In order to minimize the number of diversions of aircraft from National, the curfew on arrivals will be 11:00 pm. for all aircraft. Air carrier aircraft must be scheduled to arrive by 9:30 p.m. Since the rules adopted eliminate bunching of scheduled operations, it is believed that aircraft arriving as late as 11:00 pm. will be an infrequent occurrence occasioned by weather or mechanical delays encountered en route. These operations will be allowed up to 11:00 pm.

A final rule to implement the curfew is adopted in new sertion 159.40(a). Except for emergency operations, aircraft may not depart after 10:30 p.m. and before 7:00 a.m., or arrive after 11:00 p.m. and before 7:00 a.m. Air traffic control records departures at the time of liftoff and arrivals at the time of touchdown on the runway. Air Traffic recorded departure and arrival data will be used by

the absolute curfew will otherwise become effective.

The Secretary's decision removes the policy constraint against the operation of 2- and 3-engine widebody aircraft at National Airport. The FAA Office of Aviation Standards has carefully considered operation of this type of aircraft with National's existing traffic mix. FAA has concluded that the operation of these aircraft types at the airport, and in that environment, can be accomplished safely. However, before an individual air carrier is permitted to operate a widebody aircraft at National Airport, the carrier must meet two tests. First, the carrier must satisfy the FAA's Office of Aviation Standards that the manner in which the carrier proposes to operate each type of widebody aircraft meets the safety standards that the FAA has established. Second, the Director of the Metropolitan Washington Airports must be satisfied that each carrier's proposal to use widebody aircraft is compatible with the Airport's airside and terminal facilities and its roadway system.

Additional Information

The Secretary's decision constitutes a memorandum of decision under the Council on Environmental Quality regulations implementing the National Environmental Policy Act. It was filed with the Environmental Protection Agency as part of the Final Environmental Impact Statement. Since the regulations will not become effective until January 5, 1981, no final action will be made during the regulatory waiting period. The FAA Docket No. 19948 will remain open until October 20, 1980, so that any environmental objections to the action may be lodged. Environmental comments should be submitted in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention Rules Docket, AGC–204, 800 Independence Avenue, S.W., Washington, D.C. 20591.

The final rule will become effective on January 5, 1981. The lead time is necessary in order to permit the air carriers to make the schedule modifications necessitated by these rules. The original proposal to make them effective January 1 has been modified slightly to permit carriers to serve the holiday weekend traffic without a sudden reduction in flights. Accordingly, Subpart K of Part 93 of the Federal Aviation Regulations (14 CFR Part 93) and Subpart C of Part 159 of the Federal Aviation Regulations (14 CFR 159) are amended, effective January 5, 1981.

(Secs. 103,307(a), (b) and (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1303, 1348 and 1354); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655).)

NOTE. The FAA has determined that this document is a significant regulation under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). FAA has prepared an evaluation covering economic and urban community impacts. A copy of this evaluation is contained in the regulatory docket.

Amendment 159–21

Solicitation and Leafletting Procedures at Washington National and Dulles International Airports

Adopted: October 17, 1980 **Effective: October 26, 1980**

(Published in 45 FR 70237, October 23, 1980)

SUMMARY: This rule amends the regulations pertaining to charitable, religious, and political leafletting and soliciting at National and Dulles Airports. These amendments are editorial in nature or remove restrictions and are intended to clarify the requirements imposed on applicants for leafletting or soliciting permits.

On May 20, 1980, FAA issued a final rule amending 14 CFR Part 159 (45 FR 35306, 5/27/80), National Capital Airports, to provide for regulation of solicitation and leafletting by noncommercial organizations at National and Dulles Airports. This final rule was issued in accordance with Title V of Public Law 96–193 enacted February 18, 1980. Subsequent to publication of the final rule, the original effective date of July 28, 1980, was deferred 90 days to October 26, 1980, to permit completion of various administrative requirements associated with implementation of the rule. (45 FR 49917, July 28, 1980).

Since the final rule was issued, FAA has received petitions for reconsideration of the rule from the following organizations:

Aviation Consumer Action Project; Alliance for Preservation of Religious Liberty; American Civil Liberties Union Fund of the National Capital Area.

These petitions were considered as petitions for rulemaking under Part 11 of the Federal Aviation Regulations (14 CFR Part 11). The petitions were published in full in the *Federal Register,* 45 FR 59897, September 11, 1980. Comments on them were requested by November 10.

Consideration will be given to amending the final rule based on the petitions and the comments received. In the meantime, the rule as clarified in this amendment will become effective October 26, 1980.

The amendments remove restrictions on noncommercial activity at the airports and clarify possibly ambiguous language.

The restrictions that permit the sale of written or printed matter only by persons doing so for the sole benefit of religious beliefs, §§ 159.93(a)(3) and 159.93(c)(2)(v)(A) and (B) removed.[1]

The regulations will not distinguish between sales by religious solicitors on the one hand and sales of written or printed matter by political or tax exempt organizations on the other. This regulation will allow sale of written or printed matter for noncommercial purposes primarily because it is difficult to distinguish between the act of selling written or printed matter and the exchange of such material for a solicited contribution. The airport's interest in preventing congestion, in regulating commercial activity and protecting the public from fraud are equally affected by a sale or exchange of material.

Also, in § 159.93(c)(2) which establishes the permit application procedure, the reference to distribution of written or printed matter is modified to further clarify that the person who seeks only to distribute written or printed matter on the airport without soliciting funds or selling the printed matter is not subject to the procedure of § 159.93(c)(2). Section 159.93(c)(2) applies to those persons seeking to solicit contributions or sell written or printed matter on the airport. Those who seek only to distribute will be given a permit, if available, upon request under § 159.93(c)(1). Language is being added to that section to make clear those persons to whom it applies.

Sections 159.93(c)(2) and (c)(2)(ii) are being modified to further clarify that each person who seeks to solicit contributions or sell printed matter may do so only as a representative of a noncommercial organization or in connection with religious expression. With the exception of those soliciting for religious purposes, solicitors must represent an organization although membership in the organization is not required.

Section 159.93(c)(2)(v)(B) was intended to allow a person to solicit funds on the airports on behalf of a political organization. The definition of a political organization was not intended to be restrictive. For this reason the requirement that the organization have as its ''primary'' function the influence of the nomination, election, or appointment of one or more individuals to Federal, state, or local public office; to influence legislation or to advocate issues or causes to the public is not appropriate. The

[1] Sections 159.91(a), which prohibits persons from engaging in any business or commercial activity at the airport without approval, is not affected by this amendment.

number and be submitted in duplicate to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket, AGC–24, 800 Independence Avenue, S.W., Washington, D.C. 20591. All communications received on or before November 24, 1980, will be considered by the Administrator and these amendments may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons.

ADOPTION OF THE AMENDMENT:

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR Part 159) is amended effective October 26, 1980.

(Secs. 2 and 4 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Secs. 4 and 10 of the Second Washington Airport Act, 64 Stat. 770; sec. 313 of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1359); sec. 6, Department of Transportation Act (29 U.S.C. 1655); Sec. 501 of P.L. 96–193, February 18, 1980.)

NOTE—The Federal Aviation Administration has determined that this document involves a regulation which is not significant under Executive Order 12044, as implemented by DOT in Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). In addition, since these amendments are editorial and clarifying in nature, or are relaxatory, and impose no additional burden on any person, the Federal Aviation Administration has determined that the anticipated impact is so minimal that an evaluation is not required.

Amendment 159–22

Metropolitan Washington Airports

Adopted: October 21, 1980 **Effective: April 26, 1981**

(Published in 45 FR 71251, October 27, 1980)

SUMMARY: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy (45 FR 62398) and implementing regulations (Amendments 93–37 and 159–20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62406). The implementing regulations were to become effective on January 5, 1981. The Department of Transportation and Related Agencies Appropriations Act, 1981, Pub. L. 96–400, however, prohibits the full implementation of the DOT/FAA policy and regulations until April 26, 1981. Therefore, this notice is being issued to announce a delay in the implementation of the entire Metropolitan Washington Airport Policy and to change the effective date of all the implementing regulations until April 26, 1981.

FOR FURTHER INFORMATION CONTACT:

Edward Faggen, (Telephone (703) 557–8123), or Charles C. Erhard, (Telephone: (703) 557–0972), Metropolitan Washington Airports, Washington National Airport, Hangar 9, Washington, D.C. 20001.

SUPPLEMENTARY INFORMATION: On September 18, 1980, DOT/FAA published the Metropolitan Washington Airport Policy and implementing regulations (Amendments 93–37 and 159–20) to guide the future operation and development of Washington National Airport and Dulles International Airport (45 FR 62398). The implementing regulations were to become effective on January 5, 1981. The Department

together. We are cutting back the number of certificated air carrier operations at National, allowing for the use of widebody aircraft, and modifying the non-stop service perimeter. We would not undertake to do one of these things without doing the others. Nor would we want to make a substantial investment in National's redevelopment with its future unresolved. In short, the Policy was developed as a package because it is the only way to overcome the continuing controversy over National's future. The environmental impact statement that was prepared under a court order addressed the Policy as a whole, not in fragments. We are, therefore, not prepared to proceed with certain elements of the policy in January while the reduction in flights is deferred.

In summary, the policy for National and Dulles airports must be implemented on time and with all parts of the balanced package in place.

For the reasons discussed above, additional notice and public procedure on this change to the effective date of Amendments 93–37 and 159–20 is unnecessary and good cause exists for making this change effective upon publication in the Federal Register. For the same reasons, full compliance with the procedures of Executive Order 12044, as implemented by the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), is not possible.

Accordingly, consistent with the position expressed in the Secretary's letters of September 23, the effective date of Amendments 93–37 and 159–20, which were published in the Federal Register on September 18, 1980 (45 FR 62406), is changed from January 5, 1981, to April 26, 1981.

(Secs. 103, 307(a), (b), and (c), and 313(a) of the Federal Aviation Act of 1958, as amended (49 U.S.C. Sections 1303, 1348(a), (b) and (c) and 1354(a)); Sections 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688, as amended by 61 Stat. 94; Section 4 of the Second Washington Airport Act, 64 Stat. 770; Section 6 of the Department of Transportation Act (49 U.S.C. Section 1655).)

NOTE: The FAA has determined that this rulemaking is significant under Executive Order 12044, as implemented by the DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); the impact of this document is, however, minimal and does not warrant a full regulatory evaluation.

Amendment 159–23

Metropolitan Washington Airports

Adopted: January 6, 1981 **Effective: April 26, 1981**

(Published in 46 FR 3499, January 15, 1981)

SUMMARY: This rulemaking amends the regulations pertaining to the new operating policy for Washington National and Dulles International Airports which were to become effective on January 5, 1981, and will now become effective on April 26, 1981. This amendment changes the dates referenced in the regulation to make them consistent with the new effective date. It also makes other clarifying changes of an editorial nature.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, Legal Counsel, AMA–7, Metropolitan Washington Airports, Washington National Airport, Washington, D.C. 20001, telephone: (703) 557–8123.

BACKGROUND INFORMATION:

and "(c)" as "(c)", "(d)", and "(e)" and by adding new paragraphs (a) and (b). Former paragraph (c), now (e), contained references to former paragraphs (a) and (b) which, due to oversight, were not changed to reflect their new designations as (c) and (d). This amendment corrects this oversight by amending new § 159.59(e) by deleting reference to the old paragraphs and substituting the reference to the correct paragraphs.

Since these amendments are clarifying and editorial in nature, I find that notice and public comment are not necessary or practical. This amendment will become effective at the same time as Amendments 93–37 and 159–20. The effective date for those amendments is April 26, 1981.

ADOPTION OF THE AMENDMENTS:

Accordingly, Subpart K of Part 93 of the Federal Aviation Regulations (14 CFR Part 93) and Subpart C of Part 159 of the Federal Aviation Regulations (14 CFR 159) are amended, effective April 26, 1981.

[Secs. 103.307(a), (b) and (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1303, 1348 and 1354); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655)]

NOTE.—The FAA has determined that this document involves a regulation which is not significant under Executive Order 12044 as implemented by DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since this regulatory action involves an amendment which is corrective and editorial in nature, the anticipated impact is so minimal that it does not warrant preparation of a regulatory evaluation.

Amendment 158–24

Metropolitan Washington Airports

Adopted: March 24, 1981 **Effective: March 30, 1981**

(Published in 46 FR 19225, March 30, 1981)

SUMMARY: Notice No. 81–4 requested comments on a proposal to delay the effective date of the Metropolitan Washington Airports Policy and implementing regulations (45 FR 62397; September 18, 1980) in order to enable the Secretary to review its provisions, in light of Executive Order 12291 (46 FR 13193; February 19, 1981), and in view of the Department's inability to complete the permanent rulemaking on slot allocation at Washington National Airport (45 FR 71236; October 27, 1980). Comments received on Notice No. 81–4 have substantiated the reasons stated for the proposal, and the effective date of the Policy and rules will accordingly be delayed until October 25, 1981. Any changes to the existing Policy will be developed by July, 1981.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, Counsel, (703) 557–8123, Metropolitan Washington Airports, Federal Aviation Administration, Washington National Airport, Hangar 9, Washington, D.C. 20001.

Background

On March 5, DOT/FAA published Notice No. 81–4 (46 FR 15458), requesting comments by March 19 on a proposal to delay the effective date of the Metropolitan Washington Airports Policy and implement-

Notice 81–4 gave five reasons for delaying the effective date of the Policy once again:

1. Executive Order 12291 (46 FR 13193; February 19, 1981) established new governmentwide standards for the issuance rules and required that "major" rules issued but not yet in effect as of February 17 be suspended or postponed while undergoing reconsideration under the Order.

2. At my confirmation hearing, at the request of members of the Senate Commerce Committee, I agreed to undertake a review of the Policy. That review is now under way.

3. An additional rulemaking to determine whether to permit quieter aircraft to operate after curfew hours has not been issued. If the Policy were imposed on April 26, commuter air carrier flights operating in the early morning and late evening hours would be barred.

4. Provisions of the Policy shifting four operating slots per hour from scheduled air carriers to commuter air carriers and redefining the commuter air carrier category have made agreement in the air carrier and commuter air carrier scheduling committees almost impossible, thus necessitating DOT action to allocate slots if the Policy were not delayed.

5. The Department's rulemaking on a permanent method of slot allocation at National Airport (45 FR 71236; October 27, 1980) has not yet been completed. This means that the Department does not have an adequate means of allocating slots in the event the scheduling committees fail to agree on slot distribution for the summer (April 26-October 24) season.

The Airline Scheduling Committee, upon receipt of the Notice proposing a delay, undertook a hypothetical allocation of 40 slots per hour for the hours 7 a.m. to 10 p.m., as permitted by the existing rule, and successfully resolved a schedule. Thus we know that slot allocation at National will not require Departmental action if the Policy is delayed.

Public Comment

Over forty comments were received in response to the Notice. For the most part, commenters restated their positions on the Policy itself: community groups, local governmental bodies, and local Congressional representatives, expressing varying degrees of satisfaction with it, urged that it be permitted to take effect as scheduled; air carriers and cities that desire more service to National urged that the Policy be delayed.

Some commenters urged an interim Policy incorporating their favored provisions. Eastern Air Lines, consistent with a petition for rulemaking it had previously filed with the FAA, asked that widebody aircraft be permitted to operate at National immediately. New York Air, also consistent with a petition it had filed, sought an exemption from the High Density Rule for flights in the Northeast Corridor. These petitions will be dealt with on an individual basis; they will not be addressed here.

The City of New Orleans and the Chamber—New Orleans & the River Region asked that the perimeter rule, which would permit non-stop flights of 1000 miles from National, take effect as scheduled. The City of Houston repeated its allegations that such a perimeter rule is unlawful. Imposition of the perimeter rule separate from the rest of the Policy provisions would be inappropriate. In the meantime, perimeter restrictions are maintained by informal agreement, not by Departmental regulation.

Commenters also expressed conflicting views on the applicability of Executive Order 12291, consistent with their views on whether the Policy should be delayed. The Department has not yet determined whether the implementing rules should be classified as "major" under the Order, but it is clear in any event that, even if the Department decides that they are not, the Office of Management and Budget

This amendment will obviate major schedule adjustments by the scheduled air carriers and commuter air carriers, avoiding serious disruption and uncertainty of service at National Airport and resultant inconvenience to the traveling public. Therefore, it would be contrary to the public interest to delay its issuance. It will therefore take effect March 30, 1981.

Adoption of the Amendment

In order to provide adequate time to review the Policy, for an additional rulemaking on the curfew to be conducted, and for the scheduling committees to implement their present tentatively agreed-upon schedules for the summer season, effective March 30, 1981, the effective dates of the Metropolitan Washington Airports Policy (45 FR 62397; September 18, 1980) and Amendments 93–37 and 159–20 (45 FR 62406; September 18, 1980), as amended by Amendments 93–38 and 159–22 (45 FR 71251; October 27, 1980) are further amended to October 25, 1981.

(Secs. 103, 307(a), (b) and (c), and 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1303, 1348(a), (b) and (c) and 1354(a)); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 686 as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. § 1655))

NOTE.—This change of effective dates is not a sigmficant regulation under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26,1979).

Amendment 159–25

Metropolitan Washington Airports

Adopted: May 26, 1981 **Effective: May 26, 1981**

(Published in 48 FR 28632; May 28, 1981)

SUMMARY: This amendment codifies current practice that turbojet air carrier aircraft may not be operated into or out of Washington National Airport on scheduled nonstop flight segments of more than 650 statute miles except for nonstop flights operating to or from certain cities historically excepted from the 650-mile limitation. This amendment is necessary in order to maintain operational restrictions that have been in existence for approximately 15 years at National Airport while the Metropolitan Washington Airports Policy and implementing regulations are reviewed by the Secretary of Transportation in accordance with Executive Order 12291 as announced in a previous rulemaking action.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Assistant Chief Counsel, (AGC 200), Regulations and Enforcement Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–3073.

SUPPLEMENTARY INFORMATION:

On May 8, the Department of Transportation issued a Notice of Proposed Rulemaking (46 FR 26358; May 12, 1981 and 46 FR 26656; May 14, 1981) which proposed to formally adopt the existing practice of limiting nonstop flights to and from National Airport to 650 miles, except for seven cities. The notice was issued in response to representation by several air carriers that they were contemplating immediate departure from this practice before the Secretary could complete his review of the previously adopted regulations on this issue.

On May 5, 1981, R.L. Crandall, President of American Airlines, advised the Federal Aviation Administration (copy of the letter is in the docket) that on June 11, 1981, American Airlines would commence new nonstop service between Dallas/Fort Worth (DFW) and Washington National Airport (DCA). Since

the one more recently proposed by the FAA during the Carter Administration, would serve to preclude such a service, but would at the same time exacerbate the competitive inequities already noted.

Although there is no Federal Aviation Regulation setting forth a mileage limitation for operations into and out of National Airport, such a restriction has existed by agreement and understanding for approximately 15 years. It has been articulated repeatedly in FAA publications and there can be no question of the air transport industry's awareness of and adherence to this practice. In fact, no air carrier has during the past decade and a half attempted to or conducted flights that were not consistent with this accepted practice.

Since 1966, there have been numerous regulatory and policy documents (including several in which the public has been given ample opportunity to comment) which have made it clear that the 650-mile nonstop limitation at Washington National Airport was in existence and adhered to by all carriers.

On May 25, 1966, the Civil Aeronautics Board approved an agreement submitted by the Air Transport Association (ATA) on behalf of 12 air carriers, including American Airlines, in which the air carriers agreed that they would not operate turbojets into and out of DCA on nonstop segments of more than 650 statute miles, except on those nonstop route segments of more than 650 statute miles and less than 1,000 statute miles being operated by any parties thereto on a nonstop basis by schedules in effect December 1, 1965 (the seven ''grandfathered'' cities).

On July 27, 1966, the Director of the Bureau of National Capital Airports issued Notice of Proposed Rulemaking 66–29 (31 FR 10199; July 28, 1966) in which it was stated that the FAA was considering methods of affecting limitations on the number of air carrier operations at Washington National Airport as part of the general policy to provide the maximum service to the flying public. Included in the NPRM was a 650-mile limitation.

On February 2, 1972, the Acting Manager of National Capital Airports withdrew Notice 66–29 (37 FR 3059; February 11, 1972) stating that the agency had determined that the proposed rulemaking action was no longer appropriate since the objective of that notice had been accomplished by air carrier agreement and the high density air traffic rules.

Although not formally codified, the perimeter practice has been uniformly understood by the carriers. In fact, because it is a condition affecting operations at Washington National Airport, the FAA has clearly set forth this practice in the Notices to Airmen since 1974. The Notices to Airmen issued by the FAA have stated the following:

> Turbojet aircraft described in paragraph B (9–13), may not be operated into or out of airport on flight segments of more than 650 statute miles except for nonstop flights of less than 1,000 miles operating to or from the following cities:
>
> Miami, Florida; Memphis, Tennessee; Minneapolis, Minnesota; Orlando, Florida; St. Louis, Missouri; Tampa, Florida; and West Palm Beach, Florida.

Notices to Airmen (NOTAMs) are distributed by the FAA to notify airmen of changes in navigational or procedural rules, operating conditions, and information vital to flight safety. Class Two NOTAMs, such as the one used to state the 650-mile limitation at Washington National, are distributed on a biweekly basis to all FAA facilities, and to a large number of interested private subscribers, including air carriers. As part of their preflight planning, pilots are trained to check the NOTAM publications for information relating to their planned flight.

Because of its longstanding nature and because it was known to all for a number of years, publication of the perimeter was transferred from the NOTAM system to another FAA publication, *Graphic Notices and Supplemental Data*. This publication receives the same dissemination as the NOTAMs, but is published on a quarterly basis.

the following paragraph:

> The FAA believes that for the time being a perimeter restriction is necessary to preserve National Airport's ''medium'' and ''short haul'' and local service role and keep it distinct from the ''long haul'' and international role of Dulles Airport. FAA views the perimeter restriction on National as an important element to an effective managed growth policy at National.

The preamble further discussed the effects of limitation of the perimeter rule and, in fact, specifically talked about nonstop service from Washington to DFW. The NPRM proposed extension of the perimeter rule to 1,000 miles. Although numerous comments were submitted concerning the proper extent of any perimeter requirement, all comments recognized the existence of the current 650-mile limitation. On September 15, 1980, a final rule was issued by the Administrator which established the nonstop perimeter at DCA at 1,000 statute miles.

This rule was to become effective on January 5, 1981. The Congress, in the DOT and Related Agency's Appropriation Act of 1981, P.L. 96–40O, mandated a delay in certain aspects of the policy. The effective date of the entire policy, including the perimeter, was postponed until April 26, 1981, because the policy components are interrelated and should be treated as a package and not in a piecemeal fashion.

On February 27, 1981, the Secretary of Transportation proposed a further delay of the effective date for the Metropolitan Washington Airports Policy and implementing regulations. The proposed change in the effective date was necessary to ensure compliance with Executive Order 12291 (46 FR 13193; February 19, 1981), which provided new government-wide standards for the promulgation of rules. In addition, the change in the effective date was necessary to complete the Department's permanent rulemaking on slot allocations at Washington National Airport, and was consistent with both a request by the Senate Commerce Committee to the Secretary that the policy be reviewed and with Congressional concerns expressed in the action that led to the initial delay of the policy until April 26.

Therefore, on March 24, 1981, in order to provide adequate time to review the Metropolitan Washington Airports Policy, the effective date of the regulation was postponed by the Secretary until October 25, 1981 (46 FR 19225; March 30, 1981). The Secretary stated that after the policy was reviewed, any changes to it that might be developed would be published in July.

The perimeter limitation has been discussed in detail in rulemaking actions taken within the Department of Transportation during the past several years. In each case, the public has been given extensive opportunity to comment on the subject of proposed changes to the perimeter restrictions. A major element of the policy delayed by the Secretary of Transportation was the establishment of a 1,000 statute mile perimeter rule for National Airport. It should also be noted that the nonstop service planned by American, Braniff, and Pan Am from DFW and Houston to DCA would violate this 1,000-mile restriction which is currently being reviewed. Therefore, the proposed service by American, Braniff, and Pan Am would not only overturn practices of 15 years duration relating to the character of service available at National Airport, but would also interfere with the orderly review process announced by the Secretary.

Therefore, the FAA is inserting into the Federal Aviation Regulations this longstanding 650-mile limitation with specific exceptions pending review of the entire Metropolitan Washington Airports Policy.

This amendment is not intended to be an ultimate resolution of the type of service to be provided to National Airport nor does it reflect a final Departmental decision on whether there should be a perimeter or the extent of any decided upon restriction. Rather, it is merely intended as an interim measure to preserve the character of current operations at National Airport while permitting the Department of Transportation the opportunity to consider fully all the interrelated aspects of a potential policy for the Metropolitan Washington Airports.

Policy Task Force, Commuter Airline Association, Indianapolis Airport Authority, Air Line Pilots Association, the Aircraft Owners and Pilots Association, and the majority of all air carriers which submitted comments.

Several commenters questioned the duration of this regulation. The Metropolitan Washington Airports Policy implementing regulations include a Section 159.60, which in accordance with the Secretary's decision of March 24, 1981, is now scheduled to become effective on October 25, 1981. Thus, on that date (unless other rulemaking occurs) the perimeter provision contained in that rule will, by law, supersede and replace the interim perimeter provision contained in this amendment. Therefore, there is no reason to put terminating language directly into the interim rule. It must be noted that any action to change the October 25 effective date established by the Secretary or the policy and implementing regulations scheduled to go into effect on that date would be accomplished only after notice and an opportunity for public comment. Therefore, the public would be assured full participation if any additional rulemaking is needed in this area.

Those submitting comments opposed to the notice primarily raised issues relating to the policy implications and the agency's legal authority to issue a perimeter rule. While many of these commenters prepared detailed comments on these issues, the proper forum for comments concerning such broad issues is in the docket pertaining to the Metropolitan Washington Airports Policy, not the docket for this rulemaking, the objective of which is to maintain the status quo pending the resolution of the broad policy and legal issues. The Department appreciates this input and will place the comments in FAA Docket Nos. 19948 and 19950, which are the dockets being reviewed in accordance with the Secretary's decision to review the Metropolitan Washington Airports Policy.

It is interesting to note that the three carriers directly opposed to this interim rule (Braniff, American, and Pan Am) never did file comments regarding the perimeter during the long regulatory development of the Metropolitan Washington Airports Policy. Comments on the draft policy were submitted by ATA on behalf of member carriers operating at National Airport, including the three mentioned above.

ATA's April 14, 1980, entire comment on the proposed 1,000-mile perimeter rule reads as follows:

> The 15 ATA member airlines now serving National Airport are not of a single view concerning the nonstop perimeter rule proposed for that airport. The majority are opposed to any limit; however, in the event a limit is to be established, of that majority 11 would favor the 1,000-mile alternatives, while 1 airline would favor the current policy. Three other member airlines prefer maintaining the current operating policy restricting nonstop flights to 650 miles with the exception of the seven ''grandfather cities'' within 1,000 miles of the airport.

It is clear from this comment that the air carrier community recognized the ''current operating policy'' of a 650-mile restriction.

It is evident that comments addressing the legality and appropriateness of a perimeter should have been filed during the comment periods for the Environmental Impact Statement (March 1980) or for the Airports Policy (January 1980). Hundreds of other comments were filed during these comment periods which resulted in a final rule which established a 1,000-mile perimeter for National Airport.

American, Braniff, and Pan American would have the Department ignore the timely comments submitted by the public, representatives of local and state governments, and various segments of industry which were fully considered during the development of the perimeter rule. They would ask that the long public process which culminated in the issuance of a final rule be ignored because of recently developed beliefs. Such an action would be totally inconsistent with the Department's responsibility to the public.

Several opposing comments were raised in connection with this proposal which must be addressed. Perhaps the most egregious comment filed by those in opposition to the proposal is one made by Pan American. In its comment, Pan American states that the proposed rule:

reservations. This fact cannot be denied. However, it must be recognized that any inconvenience to Pan American or to the public is Pan American's responsibility. Although the NPRM proposing to formalize the perimeter as a regulation was issued on May 8, 1981, and was published in the *Federal Register* on May 12, Pan American's advertising campaign (including a full-page in *The Washington Post* on May 20, 1981 the day after this comment period closed) never suggested to the public that its authority to operate the proposed nonstop operations might be voided by government regulations. If, in fact, the public is inconvenienced, it will be by Pan American's precipitous actions, not the Department's. This Department regrets any public inconvenience attendant to the promulgation of this rule. At the same time, the ultimate source of that inconvenience is the carrier which persisted in the promotion and sale of these flights during the pendency of this rulemaking.

Several commenters have stated that the proposed action would not maintain the status quo but would change it. As previously discussed, this perimeter limitation has existed for 15 years without any carrier attempting to or actually conducting an operation in violation of this limitation. Over 3½ million operations have been conducted by air carriers since this limitation was first established; each one consistent with it. As to the existence of such a limitation, we note the following statement contained in Eastern Airlines' comments in support of the rule:

> As Notice No. 81–7 points out, the perimeter rule with its exceptions was established by a 1966 agreement of carriers, including American, Braniff, and National, which agreement was ratified by CAB and has been regularly followed and applied since such date. Because of this agreement, no formal rulemaking was deemed necessary by the FAA. Since American was one of the original parties to the 1966 agreement, it is a remarkable exercise in sudden forgetfulness for American to contend now that it is free to violate the rule.

Similarly, TWA stated:

> TWA does not now take a position with respect to the substantive merits of any perimeter rule. In our view, however, a significant departure from present operating practices, like that proposed by American in disregarding the informal perimeter rule, presents a change in the status quo that may adversely impact communities presently receiving nonstop service to National—perhaps irrevocably—and would unduly affect the Administrator in his consideration of the rules pending with respect to Washington airports policy and National Airport's place in the national air transport system.

Clearly, the status quo is a 650-mile perimeter with a 1,000-mile perimeter effective on October 25, 1981, pending Secretarial review of the entire policy. Any argument that a different status quo exists ignores 15 years of practice and rulemaking.

Several commenters stated that they believed that the issuance of a regulation as proposed in the notice is inconsistent with Executive Order 12291 in that it proposes a regulation where one does not currently exist. It has been the Department's hope all along that it would not be necessary to issue a regulation codifying the 650-mile perimeter. Only when it became apparent that these carriers would not refrain from instituting this new service was it necessary to promulgate a regulation. In this connection, we note the following comments submitted by Eastern Airlines on this point:

> Not only does Eastern consider FAA's action to be sound, but Eastern also considers the method by which FAA acted to be appropriate. With little more than a month's notice, American, Braniff and Pan American have informed the FAA of their respective intentions to violate an understanding of 15 years duration. The actions of these carriers, if unchecked, will likely cause other carriers, for competitive reasons, to attempt to institute service beyond the perimeter.

We also note the following comments submitted by the Washington National Commuter Airlines Association:

The City of Houston stated in its comments that the NPRM failed to provide adequate time for comments. It appears, however, from the breadth of the comments, as well as their length, that other parties had ample opportunity to respond. It should be noted that no party asked for an extension of the comment period as provided for in 14 CFR Part 11. It should also be noted that the attorneys for the City of Houston, as well as other parties, were notified prior to the time of publication of the NPRM in the *Federal Register* to give them as much notice as possible. The fact cannot be ignored, however, that the time period given for comment on the NPRM was dictated by the limited amount of notice provided by American, Braniff, and Pan American of their proposed institution of service which would break a 15-year record of cooperation. Because the carriers intended to commence service beginning on June 1, it was not possible to give additional time for comments. It is essential that this issue be resolved as quickly as possible so that the public has sufficient notice as to whether this service will be available or not. Under these circumstances the issue has been sufficiently aired; any additional delay would cause needless public confusion.

Several of the airline commenters question the need for a perimeter to maintain service at Dulles Airport. They contend either that Dulles does not need the protection of the perimeter or that decreases in Dulles activity are due to market forces which should not be disrupted. Unquestionably, the perimeter at DCA does affect operations at Dulles. If this regulation were not issued, it is likely that some carriers would commence service, not only to the Texas markets proposed by Pan American, American, and Braniff, but also to other cities outside the current perimeter now served by nonstop service to and from Dulles. In addition, competing carriers would likely be forced to move from Dulles to DCA. For example, in comments filed in this proceeding, Continental Airlines stated:

> Continental takes no position per se on whether the existing 650-mile perimeter rule should or should not be modified at this time. However, in the event that the perimeter rule is lifted, we would be compelled to shift some or all of our Dulles operations to Washington National Airport.

Similarly, US Air stated:

> Another equally compelling reason supports immediate adoption of the present National perimeter rule as an FAR. Unless the FAA maintains the status quo, longhaul services at National will proliferate, thereby diverting traffic from Dulles to National.

Clearly, the perimeter is integrally related to the efforts to establish a Metropolitan Washington Airports Policy. A sudden change in the practices of the past 15 years would be inconsistent with this Department's efforts to place reasonable limits on the spiraling use of National Airport. It could be inconsistent with efforts to achieve a more balanced use of the fine facilities at Dulles and Baltimore Washington International Airports. It could place added pressure on the already stressed slot availability issue of National, and a shift in a large number of long-haul flights to DCA, with its limited number of slots, could supplant service via National to smaller, closer-in cities. This integral relationship demands that the perimeter be considered in the context of the overall airport policy which is what the Department has undertaken to do.

While the Department is most sensitive to arguments that free market forces should be permitted to work without government intervention, the Secretary is charged by law with ''operating and maintaining'' Dulles and National Airports. Their continuing economic viability, the services they provide to the travelling public, and their impact on the community are all the proper concerns of this Department. These concerns will be addressed in the review of the Metrionaitan Washington Airports Policy. One of the decisions to be reviewed is whether the practice of limiting nonstop flights at National should be maintained, and if so, at what distance. This decision will be made in light of all of the comments and arguments advanced in the past year and a half of rulemaking. It would be inappropriate to allow the alteration of a major component of the policy before our review is completed.

is necessary to ensure that announced nonstop operations which would be inconsistent with this amendment do not go into effect. It is also needed to lessen the inconvenience to the public. As a result of actions taken by the air carriers proposing this service, it is essential that this rule become effective as soon as possible so that the public will be informed that such nonstop service is not available and the carriers and the public can make other travel arrangements.

As discussed earlier in this document, the rules implementing the Metropolitan Washington Airports Policy (which is scheduled to become effective on October 25, 1981) contain a 1,000-mile perimeter rule. Absent further rulemaking action, on that date, the 1,000-mile rule will replace the 650-mile provision in this amendment.

Adoption of the Amendment

Accordingly, Part 159 of the Federal Aviation Regulations (14 CFR 159) is amended effective May 26, 1981.

(Secs. 103, 307(a), (b) and (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1303, 1348(a), (b) and (c), and 1354(a)); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655).)

Note.—Since this rulemaking does nothing more than retain a current operating restriction at DCA for a short period of time pending review of the overall Metropolitan Washington Airports Policy, the Department has determined that: (1) It is not a major regulation under Executive Order 12291; (2) It is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) It does not warrant preparation of a regulatory evaluation as the impact is so minimal; and (4) It will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Amendment 159–26

Metropolitan Washington Airports

Adopted: October 22, 1981 **Effective: November 30, 1981**

(Published in 46 FR 52100, October 26, 1981)

SUMMARY: This document postpones the effective date of the Metropolitan Washington Airports Policy and implementing Rules. The postponement is necessary in order to allow additional time for consideration of the comments received on a proposed revised policy.

DATE: The effective date of the Amendment Nos. 93–42 and 159–24 is delayed until November 30, 1981.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, Counsel, (703) 557–8123, Metropolitan Washington Airports, Federal Aviation Administration, Washington National Airport, Hangar 9, Washington, D.C. 20001.

Background

The Metropolitan Washington Airport MWA Policy was announced on August 15, 1980, by the Secretary of Transportation. On September 15, 1980, the Administrator issued final rules implementing the Policy which were to become effective January 5, 1981. The Congress, in the Department of Transportation and Related Agencies Appropriation Act of 1981, Pub. L. 96–400, provided that none of the

expected to be completed until after October 25, 1981, the presently scheduled effective date of August 15, 1980 policy. Allowing the August 1980 policy to become effective when a proposal which could amend all or portions of that policy is under review would be inconsistent and against public interest.

Need for Immediate Adoption

As the rule is scheduled to become effective shortly, additional notice and public procedure on this change in effective date are impracticable, unnecessary and contrary to the public interest and good cause exists for making this change in effective date, effective immediately.

Adoption of the Amendment

Accordingly, in order to allow sufficient time to complete the review of comments on the proposed revised policy, the effective dates of the Metropolitan Washington Airports Policy (45 FR 62397; September 18, 1980) and Amendments 93–37 and 159–20 (45 FR 62406; September 18, 1980) as amended by Amendments 93–38 and 159–22 (45 FR 71251; October 27, 1980) as amended by Amendments 93–42 and 159–24 (46 FR 19225; March 30, 1981) are further amended to November 30, 1981.

(Secs. 103, 307(a), (b), and (c) and 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. 1303, 1348(a), (b), and (c), and 1354(a)); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 686, as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655).)

Note.—This change of effective dates is not a significant regulation under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

Amendment 159–27

Metropolitan Washington Airports

Adopted: November 23, 1981

Effective: December 6, 1981, except § 159.40 is effective March 1, 1982; Revocation of Amdt. 159–20 is effective November 23, 1981

(Published in 46 FR 58036, November 27, 1981)

SUMMARY: The FAA is adopting rules to implement the DOT/FAA policy to guide the future operation and development of Washington National and Dulles International Airports and to improve the quality of the environment in the Washington metropolitan area. These rules relate to the number and type of aircraft operations, the hours of operation and scheduling, a limit on the total number of passengers using National Airport, noise levels for nighttime operations, the perimeter for nonstop service, aircraft equipment restrictions, and the hourly allocation of operations among different classes of users at National. This amendment revokes the rules issued September 15, 1980, which were scheduled to become effective on November 30, 1981.

FOR FURTHER INFORMATION CONTACT: Edward P. Faberman, Acting Deputy Chief Counsel, (AGC–2), Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, D.C. 20591; telephone: (202) 426–3775; or Edward Faggen, Metropolitan Washington Airports Counsel, Washington National Airport, Hangar 9, Washington, D.C. 20001; telephone (703) 557–8123.

SUPPLEMENTARY INFORMATION:

Regulatory Evaluation

A final Regulatory Evaluation was prepared and has been placed in the public docket. At DOT's request, the Director of OMB, in accordance with the Executive Order, waived the requirement for a preliminary evaluation. However, a preliminary evaluation was prepared and placed in the docket in order to maximize the amount of information available to those commenting on the proposal.

Some commenters have criticized the amount of time for which the preliminary analysis was made available prior to the close of the comment period. FAA recognizes that this period of time was relatively short; however, since its preparation and release were voluntary, FAA does not consider the criticism to be warranted. The alternative was not to release the document at all, which would not have been in the public interest. It must be noted that under 14 CFR § 11.47, comments submitted after the close of the comment period would have been considered so far as possible without incurring expense or delay. The preliminary Regulatory Evaluation remained available for review after the formal comment period closed. Therefore, those commenters wishing to submit comments on the evaluation did have additional time to do so.

Some commenters claimed that the FAA has not complied with the Regulatory Flexibility Act (5 U.S.C. § 603) in this rulemaking. However, the FAA has fully complied with the Act. The FAA's certification required under the Act (5 U.S.C. § 605(b)) was contained in the notice of proposed rulemaking on this subject. A supplementary evaluation supporting that certification was placed in the docket at the beginning of the comment period.

Background

Interested persons were invited to participate in the making of the policy and these rules by a Notice of Proposed Rulemaking (NPRM) published July 13, 1981 (Notice No. 81–8; 46 FR 36068). Written comments were received from citizens residing near the airport, local municipal and county governments, cities served or desiring service into National, and the air carrier and general aviation industries. In addition, FAA heard the views of more than 50 speakers at public hearings held July 28–29. Many of the speakers represented large organizations of citizens or airport users.

The United States, acting through the Federal Aviation Administration (FAA) of the Department of Transportation (DOT) owns, operates and maintains the Metropolitan Washington Airports—Washington National and Dulles International, the two air carrier airports serving the Washington, D.C. area. Baltimore-Washington International Airport (BWI) also provides service to metropolitan Washington, and is owned and operated by the State of Maryland acting through the Maryland Department of Transportation (MDOT).

For approximately 10 years, the U.S. Department of Transportation has been seeking to establish an appropriate policy to guide the management and operation of Washington National and Dulles International Airports. Once a role for each airport in meeting the Washington metropolitan area's air transportation needs is clearly defined, it will be possible for DOT to move ahead with decisions pertaining to the facilities at Washington National while continuing to make timely improvements to Dulles. An understanding of the role of each airport is necessary to assure that the investment in improvements and management of present facilities are consistent with the area's needs. While the U.S. DOT does not establish policy for BWI, it recognizes that actions taken at National and Dulles Airports may influence operations at BWI. Therefore, BWI's role was considered in the development of this policy for the federally owned airports. The respective roles of these three airports have been the subject of several studies by the U.S. DOT, the State of Maryland DOT, and the Metropolitan Washington Council of Governments (COG).

In March 1978, the FAA issued a Notice of Proposed Metropolitan Washington Airports Policy (43 FR 12141; March 23, 1978). At that time, FAA proposed that Dulles Airport would continue to provide all types of air service to the Washington area. At National it was proposed to formally adopt the existing 650-mile nonstop perimeter, to retain the existing limit on air carrier activity at 40 scheduled

proposals with respect to nighttime operations, the number of operations allocated to different classes of users, the annual passenger limitation, and the nonstop service restriction at National. Also, on January 15, 1980, the FAA's Administrator issued an NPRM (Notice No. 80–2; 45 FR 4314; January 21, 1980) in which rules to implement the proposed policy were presented for public review and comment. The FAA also issued a supplement to the FAA Draft Environmental Impact Statement that had been issued in March 1978. As part of this rulemaking effort, the FAA held three public hearings which supplemented the hundreds of comments submitted during the comment period.

A Metropolitan Washington Airports Policy was announced on August 15, 1980, by the Secretary of Transportation. The FAA filed its Final Impact Statement with the Environmental Protection Agency on that same date. On September 15, 1980, the Administrator issued final rules implementing the Metropolitan Washington Airports Policy issued by the Secretary (45 FR 62398; September 18, 1980). The policy and regulations were as follows:

1. *Growth Limitation at National.* Washington National Airport would be permitted to accommodate no more than 17 million total passengers per year. That level would be maintained by periodically adjusting the number of operations allocated to air carriers operating aircraft with 56 passenger seats or more.

2. *Operating Hours.* The hours of operation at Washington National Airport were to be modified to provide that no air carrier, air taxi or commuter would be permitted to schedule operations between the hours of 9:30 p.m. and 7:00 a.m. Additionally, a curfew would be in force on all aircraft departures between the hours of 10:30 p.m. and 7:00 a.m. Similarly, there would be a curfew on aircraft arrivals between the hours of 11:00 p.m. and 7:00 a.m. FAA was to determine if a noise level limitation in lieu of an absolute curfew could be adopted consistent with the objective of maintaining a quiet nighttime environment.

3. *Slot Availability to Various User Classes.* The total number of operating slots at Washington National would remain at 60 per hour, as provided in the existing High Density Rule (14 CFR 93.121, *et seq.*). The portion of that total which would be available to scheduled certificated air carriers was reduced to 36 per hour, a reduction of 4 per hour from the current allocation of 40 per hour. The commuter allowance was increased from 8 per hour to a level of 12 per hour with additional slots contemplated if air carrier slots were reduced over time.

4. *Use of Wide-body Aircraft at National.* The policy would have ended the prohibition on the use of two and three-engine wide-body aircraft at Washington National provided that the FAA determined that the use of such aircraft was operationally feasible and the Director of FAA's Metropolitan Washington Airports found that the use of such aircraft was compatible with that aircraft operator's apron and terminal facilities and with the airport's other terminal and roadway capabilities.

5. *Nonstop Perimeter at National.* The nonstop service perimeter for Washington National would be redefined at 1,000 statute miles, with no exceptions.

6. *Improvement of Washington National.* The FAA would undertake to develop a master plan for the physical redevelopment of Washington National.

7. *The Role of Dulles.* Dulles Airport would provide all types of aviation service. The Dulles Airport Access Highway would remain an airport-only roadway with the exceptions currently in force. Additional access improvements to Dulles would be pursued.

The regulations issued on September 15 were to become effective on January 5, 1981. The Congress, in the Department of Transportation and Related Agencies Appropriation Act of 1981, P.L. 96–400, provided that none of the funds appropriated could be used to mandate any reduction of the total number of certificated air carrier slots allocated per hour at National before April 26, 1981. As a result of that law and because the Metropolitan Washington Airports Policy elements were interrelated, the effective date of the entire policy was postponed until April 26, 1981.

Summary of the Policy

The FAA and the Office of the Secretary of Transportation have reevaluated each aspect of the Metropolitan Washington Airports Policy and the implementing regulations with reference to Executive Order 12291, the Regulatory Flexibility Act, and comments received during the comment period in light of the Department's objectives. The objectives for the Metropolitan Washington Airports Policy have been stated repeatedly over the years. Stated concisely, the DOT's objectives have been and remain:

1. To provide the metropolitan Washington area with safe and efficient airport facilities.

2. To prescribe a role for Washington National and Dulles International Airports which, considering environmental and safety factors, will permit orderly planning by the FAA, the surrounding region, and the aviation industry for the future of these facilities.

3. To reduce the aircraft noise and congestion associated with the prevailing use of Washington National.

4. To promote better utilization of Dulles Airport.

5. To achieve optimum utilization of existing and planned capacity at the airports.

Comments on the Notice, as well as those submitted on previous proposals concerning this issue, reveal sharp differences on the policy. Commenters from the immediate region in which the airports are located, including the States of Virginia and Maryland, regional and municipal officials, and many local residents, expressed the view that with Dulles and BWI Airports available to serve the region, the concentration of the region's air carrier activity at National Airport is an unwarranted burden on the residents who are constantly exposed to aircraft noise. Other commenters, including the air carrier industry, business interests, many from beyond the Washington area, and elected officials from many areas of the country, expressed the opinion that National Airport is a uniquely convenient and valuable transportation asset that must be kept available for air travellers and shippers.

With these ends in mind, the Metropolitan Washington Airports Policy is as follows:

1. The number of scheduled operations at Washington National Airport by air carriers utilizing aircraft with 56 or more passenger seats shall be limited to 37 per hour. The numerical limitation on the scheduled operations of commuter air carriers (operations involving aircraft certificated with less than 56 passenger seats) shall be 11 per hour while the number of reservations available for general aviation operations will remain at 12 per hour.

2. There will be noise limitations imposed on aircraft operated after 9:59 p.m. and before 7:00 a.m. at Washington National Airport. The noise limits will be sufficiently stringent to permit only relatively quiet aircraft to operate during nighttime hours. Adoption of daytime noise limits will be deferred at this time pending further review during a one year period after date of issuance.

3. Washington National Airport will be permitted to accommodate no more than 16 million total passengers per year.

4. Any air carrier aircraft types not currently operating at National Airport will not be allowed to use the airport: (1) until it has been determined by the Administrator that operation of the aircraft at the airport meets appropriate safety concerns; and (2) until it has been determined by the Director of the Metropolitan Washington Airports that the proposed operation is compatible with the airport's gate, apron, baggage and passenger handling, and roadway facilities.

5. Nonstop air carrier service to and from Washington National Airport shall be limited to distances of not more than 1,000 statute miles.

reasonably be imposed as proposed or in a modified form. Interested parties will be contacted during this review.

Finally, consideration will also be given by the task force to a proposal made in the rulemaking process by the commuter air carriers. They argued that they should be permitted more operations than proposed, on the condition that they be operated with aircraft that meet the nighttime noise levels. The FAA, in determining whether to allow them, will consider the effects of any such additional flights on noise levels, congestion, and air traffic.

Policy Description

The following is a further description of the adopted policy and regulations:

1. Passenger Ceiling.

Under this policy the annual passenger limitation at National Airport will be 16 million total passengers per year (including enplaned plus deplaned passengers from air carrier, commuter and general aviation operations). The limitation (see § 93.124) will be maintained by future reductions in the slots of "air carriers except air taxis" as defined by these regulations. Although the reduction in air carrier slots from 40 to 37 will reduce the number of air carrier operations conducted at National Airport, the capacity limitation is necessary because the number of passengers utilizing the airport may continue to increase, even without the introduction of new aircraft types. Passenger activity has decreased slightly at National compared to 1979 levels, but growth trends can be expected to resume. Under existing limits, passenger activity has increased from approximately 11 million in 1972 to 15 million in 1979. This rule will limit that increase to be consistent with an appropriate level of use of airport facilities and will shift future growth in passenger activity to Dulles and BWI Airports. Thus, the cap on growth is a key to achieving the goals of this policy.

If no limitation were imposed, Washington area passengers would be expected to be distributed in the future as follows:

Annual Passengers
(Forecast in million annual passengers)

Year	*National*	*Percent Market*	*Dulles*	*Percent Market*	*BWI*	*Percent Market*
1980	14.8	69	2.7	13	3.9	18
1985	19.1	60	6.3	20	6.2	20
1990	19.2	53	8.8	24	8.3	23

The forecast shows National continuing to dominate, in terms of passenger activity, through this decade, even assuming, as the above figures do, that wide-bodies are not allowed there. If wide-bodies, which seat about 200 to 275 passengers, were permitted to replace the 90- to 150-seat aircraft now serving National, passenger activity would grow even faster. It would be projected to reach 19 million passengers even earlier than shown above.

The growth potential is so great that, even with the reduction of the number of operations per hour allowed by this rule, combined with the nighttime noise limitations, National's passenger traffic could increase substantially if capacity limitations were not adopted. The reduction from 40 to 37 flights per hour may slow the rate of growth at Washington National somewhat, but would not by itself bring about a significant shift in future passenger activity to Dulles or BWI. Therefore, the ceiling on passenger activity at National is necessary.

Several commenters urge FAA to set the passenger ceiling at a lower level. Some commenters state that 14.5 million passenger level (approximately the level prior to the air traffic controller's strike)

from 40, would permit annual passenger activity at the airport to exceed 14.5 million when the growth trends in passenger activity resume. Therefore, further slot reductions would be necessary almost immediately, which could have service impacts that are not necessary for furtherance of this policy.

The slot reduction mechanism itself should enable the air carriers to plan operations at National even though there could be possible fluctuation in the number of slots available. The mechanism will automatically adjust the number of hourly scheduled operations or operating slots that are available to air carriers operating aircraft with 56 or more passenger seats. Under the amendment, the number of passengers will be allowed to grow toward the ceiling, but slot reduction will occur to assure that the 16-million level is not exceeded.

As provided in § 93.124, once a year (in January), the FAA will prepare a forecast of total enplaned and deplaned air passenger activity (air carrier, commuter, and general aviation) over a 12-month period, beginning the following April. If the forecasted activity for the 12-month period is in excess of the target number of passengers, 16 million, then the number of hourly slots allocated to air carriers (37) will be reduced. The slots reduced from the air carrier allocation will be added to the air taxi allocation. If future projections were to show that the 16 million target would be exceeded, then additional slots would be deleted until the forecast passenger activity stabilizes at less than 16 million. For example, if the forecast showed that 35 hourly air carrier slots would result in a passenger capacity of more than 16 million, then the air carrier hourly slot level will be reduced to 34 and the air taxi hourly slot level will be increased to 14.

The formula would also work in reverse. In a situation where, first, passenger activity forecasts have led to a reduction in slots below 37, and then passenger activity is forecasted to go below 16 million, then slots will be added to the air carrier total so long as the resultant forecast remains below 16 million. The slots added to the air carrier hourly total will be taken from the air taxi hourly total. This would permit the carriers to add flights, but no increase above 37 total slots per hour will be permitted.

Some commenters suggest that by adding the reduced air carriers operations to those by the air taxis the total passenger count would continue to rise and air carriers would lose additional slots as a result of actions not taken by them. Under this mechanism for enforcing the cap, the alternative of holding the air carrier slots in escrow in lieu of allocating them to the commuters is not considered necessary inasmuch as, in view of the aircraft types used by commuters, use of these slots by commuters will not drive the passenger count up significantly.

The annual modification of slots allocated to air carriers other than air taxis would be automatic. Several commenters suggest that the proposed forecast be published for comment before slot adjustments are made. The FAA recognizes the significance of a forecast which results in the reduction of slots. Therefore, the agency will review the forecasting procedures and will use a notice procedure in which the preliminary forecast of annual passenger activity will be published in the *Federal Register*. After some comment period, the final forecast and slot modification, if any, will also be published. Any slot modification resulting from this process would be effective for the next airline scheduling period beginning in April, and would remain in effect until superseded by another forecast.

2. Operating Slots.

This rule (§ 93.123(c)) modifies the distribution of instrument flight operations (takeoffs and landings) or "slots" for air carriers and commuters and keeps the "other" group at its current level. The number of "air carrier except air taxis" as defined in § 93.123(c), operations at National may not be more than 37 per hour. The carriers currently schedule up to 40 operations per hour. A reduction of 3 air carrier operations per hour will, by itself, eliminate 45 potential operations between 7:00 a.m. and 10:00 p.m. Although operations could be conducted under this amendment between 10:00 pm. and 7:00 a.m., aircraft involved in such operations would have to comply with applicable noise limits set out in § 159.40. None of the aircraft currently in use at National by air carriers comply with these noise level restrictions.

carrier'' slots would have to be used for operations (air carriers and commuters) with aircraft having a maximum certificated passenger seating capacity of 56 seats or more, while ''air taxi'' slots would have to be used for all air carrier or commuter operations in aircraft having a maximum certificated passenger seating capacity of less than 56. Some commenters asked for a definition of the word ''certificated.'' The phrase as used in this section refers to the original type certificate not a supplemental or amended type certificate.

As a result of the change in definition of air carrier and air taxis, the number of operators seeking air carrier slots will decrease. Today, more than 50 of these slots per day are used for operations conducted with aircraft with fewer than 56 seats that will no longer be eligible for ''air carrier except air taxi'' reservations. Therefore, this slot adjustment will not result in a major reduction in the actual number of operations that are today conducted by operators with aircraft having 56 seats or more.

Extra Sections.

As under the previous policy, § 93.123(b)(4) provides that extra sections of a scheduled operation will not be required to obtain a slot reservation. The rule (§ 93.123(b)(4)) is modified to allow ''scheduled air taxis'' also to fly extra sections to and from Washington National without regard to the slot limitations of § 93.123(c). At the time at which the high density rule was issued, there was no need to extend the ''extra section'' authority to air taxi operations. As a result of changes in the industry, there is no longer a basis for limiting this authority to air carriers. Therefore, air taxis at National will also be able to utilize extra section authority.

Comments were submitted in connection with the use of ''extra sections.'' New York Air states that allowing continuation of ''extra section'' authority while eliminating ''ATC'' authority (under § 93.128) amounts to regulatory bias. The ''extra section'' provision pertains to a type of service; it does not limit who can use that service. It was designed to give carriers who wanted to operate ''extra sections'' the ability to conduct that particular type of operation without having to obtain a reserved ''slot.'' The alternative was to require a carrier to obtain a slot for an entire scheduling period although the slot might only be used for certain days during that period. This would be an inefficient use of slots and would deprive carriers of the opportunity to conduct other operations. The fact that only one carrier, Eastern, uses a large number of these ''extra sections'' to conduct a shuttle type of operation is not a consequence of the rule but instead reflects individual management decisions. Other carriers do operate extra sections, particularly during holiday seasons.

If newer carriers do not implement a shuttle type of service, the use of this provision by one carrier does not make the provision discriminatory. There are many types of service new entrant carriers do not choose to provide. Yet, the DOT is not obligated to forbid other carriers from offering them. DOT would not be justified in eliminating the extra sections provision solely because a particular carrier is not in the position to make use of it or gives priority to use of its equipment in other markets.

DOT is concerned over allegations made about the manner in which ''extra section'' flights have been operated. For example, the use of ''advance'' sections is inconsistent with the intended use of this provision. Eastern Airlines in its comments states (p. 6):

> If a greater number of passengers appear for a scheduled flight than can be accommodated on that flight, the extra section rule permits the carrier to initiate an extra section to ensure that every passenger demanding a seat on a regularly scheduled flight is accommodated.

This statement does reflect the type of service which was intended to be accommodated by this provision. To expand on this, DOT considers an extra section to be an operation which: (a) is nonscheduled; (b) serves the passengers who cannot be accommodated on the original scheduled section for which the carrier has obtained an arrival or departure reservation; and (c) the original section should depart no more than a few minutes before, on, or after the time at which it was scheduled.

at National. As a result of a demand for additional shorthaul commuter type service to Washington from smaller communities not served by the larger aircraft, there is a large number of commuters on the waiting list for slots at National.

The Washington National Commuter Airline Association (WNCAA) strongly supports the policy but recommends that it should be adjusted to provide for an additional number, as many as nine, of hourly ''quiet commuter aircraft operations.'' In support of this proposal, WNCAA states that the proposed slot numbers for their members would result in a net loss of daily slots. With the suspension of service to small communities in states surrounding National by trunk and local service carriers, WNCAA believes that commuters present the only alternative to service from such points to National Airport. To maintain the proposal's overall environmental integrity, WNCAA proposed that these additional operations be required to meet the nighttime noise restrictions (Departures—72 dBA as generated on takeoff; Arrivals—85 dBA as generated on approach).

A number of commenters (including some at the public hearing) supported some additional authority for commuters. The Dulles Policy Task Force states that although it supports the policy, it is concerned about ''one possibly detrimental aspect of the proposed policy: its impact on continuing adequate service to communities in Virginia.'' To remedy this, it recommends that special provision be made for additional commuter airline access to National as proposed by WNCAA. Similar comments were submitted by the Attorney General and the Department of Aviation for the Commonwealth of Virginia.

DOT recognizes that the provision of additional authority for commuter operators may have merit. Additional operations by commuter aircraft meeting the nighttime noise levels would not be inconsistent with many of the objectives of this policy. Promulgation of such a provision will be reviewed during the next year in connection with the review of the noise levels themselves. It must be noted that issuance of such a rule at this time would be of little value since all operations at National Airport are limited under the Interim Operations Plan developed in response to the air traffic controller's strike. Under this plan, it is unlikely that the number of commuter operations could increase in the near future. For this reason, further review of this issue will not have an adverse impact.

General Aviation.

The number of slots allocated to general aviation operators, ''others,'' will remain at 12 per hour. Under the current regulations and practices, general aviation operators are required to obtain an arrival or departure reservation from air traffic control. The number of general aviation IFR reservations per hour authorized at National is 12 (this is the same number that would be authorized under the previous policy), except that the regulations permit additional operations whenever the aircraft can be accommodated without significant additional delay to the operations allocated for the airport. The number of general aviation operations has remained relatively constant over the past several years, although the number varies on a day-by-day basis. The experience has been that, except in poor weather conditions, the airport has accommodated more than 12 general aviation operations per hour.

Several commenters state that the proposal misplaced priorities by proposing to decrease the number of certificated air carrier aircraft using National in favor of commuter aircraft and general aviation. The criticism relates to the fact that these smaller aircraft use the limited airspace and airport facilities to serve fewer persons than are served by the certificated air carrier aircraft. The criticism would be valid if the FAA's sole obligation were to maximize the number of persons transported through National Airport. However, National Airport is already being used beyond the design capacity of its terminal and roadways. The 1977 study performed for the FAA by the firm of Howard, Needles, Tammen and Bergendoff identified large portions of the public space within the terminal, as well as the curbside and traffic circle area, as inadequate to serve the number of people making demands on those facilities. The reduction of potential air carrier operations in large aircraft and the increase of commuter operations to smaller communities promotes the FAA's objective of relieving the overuse of National while tending to promote use of Dulles for air carrier service.

contains a revised limitation on the number of hourly operations at National Airport by air carriers (including air taxis). The objectives of the policy are less achievable if these operators are permitted to substantially exceed the proposed limitations. Some parties have interpreted tbe current rule to allow as many additional operations as the air traffic control at the airport will accommodate. This was never the intent of the rule and, indeed, only a few carriers have conducted more operations than the number allocated to them. Although these provisions have been in effect for over 10 years, these carriers began these operations within this year. Therefore, the restrictions proposed in Notice No. 80–26 and the Supplemental Notice of Proposed Rulemaking are being adopted to make them applicable to operations at National Airport. Application of these provisions to the other high density airports was not proposed in the July NPRM; this amendment relates only to National Airport. If it is subsequently determined appropriate to clarify the High Density Rule with respect to operations at other high density airports, a separate regulatory effort would need to be considered.

Section 93.129 is amended to provide clearly that scheduled air carriers operating to and from National Airport may not obtain additional reservations beyond those allocated under § 93.123. For the purpose of this section, a scheduled operation would be defined as an operation regularly conducted by an air carrier between National Airport and another point served by that air carrier unless the service is conducted pursuant to the charter or hiring of aircraft, or is a nonpassenger flight. This provision is further amended to make clear that any such "charter" or "hiring" can not be on a regular basis but must be "irregular."

This provision would not affect § 93.123(b)(3) which permits nonscheduled flights of scheduled air carriers to be conducted at Washington National Airport without regard to the limitation of 37 IFR reservations per hour. This rule would also not affect the provisions of § 93.123(b)(4) which provide that extra sections of scheduled air carrier flights may be conducted without regard to the limitation on hourly IFR reservations. The extra section authority is available to any carrier with a slot for a regularly scheduled operation. The extra section rule is intended to accommodate operations, the necessity of which an operator cannot precisely predict. They are not scheduled operations and it would be impractical to obtain permanent slots for such operations. Regularly scheduled operations do not have the same uncertainty and, thus, require slots. As modified, the rule will allow air carriers to utilize § 93.129 on an occasional basis for positioning or to replace inoperative aircraft.

New § 93.219(d) makes regulatory the longstanding method by which an operator obtains additional IFR reservations at a high density airport. In 1969, the NPRM originally proposing the High Density Rule stated:

> For flights between two high density airports, approved reservations for the takeoff and arrival would have to be obtained prior to takeoff. After receipt of the approval, the operator would file an IFR flight plan in the usual manner.

This procedure has been used since the rule was first promulgated, more than a decade ago. Currently, Advisory Circular No. 90–43D, "Operations Reservations for High Density Traffic Airports," sets forth the method by which additional IFR reservations are to be obtained from air traffic control. Additional IFR reservations can only be obtained by contacting the FAA Airport Reservation Office (ARO) directly or by submitting a request for reservation to the nearest Flight Service Station. The air traffic control towers are not authorized to grant additional IFR slots nor does the fact that the tower permits the operation to occur constitute an authorization under the High Density Rule. Air traffic control towers do not turn aircraft away; their function relates to handling the traffic that comes to them safely. Therefore, the intended practice has always been that an operator proposing to fly IFR to or from a high density airport must obtain a reservation not from the tower but by allocation under § 93.123 or from the ARO prior to takeoff. This practice is adopted in the regulations.

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[1] The term "air carrier" as used in the Federal Aviation Regulations is defined in 14 CFR 1.1 as, "a person who undertakes directly by lease, or other arrangement, to engage in air transportation."

should begin an assessment of their service to Washington with an eye towards voluntarily shifting to Dulles or BWI some or all of its service and thus avoid the slot allocation difficulties at DCA. DOT has taken action to make service to Dulles more attractive to carriers by reducing landing fees and mobile lounge charges and these incentives will continue. Moreover, in view of the planned improvements in groundside access to Dulles, some of which are underway, DOT believes Dulles may become an extremely attractive alternative for carrier management.[2]

Hours of Operation and Noise Levels

3. There will continue to be no restriction on the operating hours of Washington National Airport. The noise level limitations (§ 159.40) will effectively control nighttime and early morning operations. This approach provides meaningful noise relief, does not penalize the operators of newer technology, quieter aircraft, and provides incentive for other operators to use quieter aircraft.

The NPRM proposed day and night noise limits for aircraft operating at National. Many objections to the noise limits were voiced by the airlines and the equipment manufacturers. The most significant criticisms of the proposal were that the daytime levels for 1986 imposed more stringent noise limits on National Airport than Congress imposed on the aircraft manufacturers, the result being that even after the great cost of retrofitting aircraft and purchasing new aircraft which meet the noise standards for FAA certification, the operators would still not have aircraft able to operate at National Airport. Some commenters asserted that application of these standards at other major airports would also impose an economic burden on the carriers requiring capital that may not be available within the time frames proposed based upon anticipated revenues. The most compelling argument is that there may not be sufficient quiet aircraft to replace the noncomplying aircraft under the 1986 standards.

The Boeing Company does not believe that there are sufficient complying aircraft in the fleet or on order to meet the proposed 1986 noise limits. Boeing and several air carriers estimate that to comply with the limits proposed for National, the carriers would need almost 500 "quiet" airplanes, and only about half of that number might be available. The proposed 1986 daytime noise limits would have eliminated from the airport most air carrier aircraft that now exist. The Air Transport Association (ATA) states that only 113 Stage 3 aircraft appropriate for use at National under the proposed policy are now on order and will be in use by the operators at the end of 1986. To maintain existing service at National, ATA claims that the carriers would be required to purchase or reengine over 350 additional aircraft by 1986. Although DOT is not prepared to acknowledge that these comments are accurate, the comments do reflect concern by the air carriers about their ability to function under the proposal. It is, therefore, appropriate to conduct additional analysis of fleet availability before such a rule is adopted. A final rule which could cause severe financial and service repercussions would not benefit anyone.

Instead of issuing daytime noise limits at this time, a DOT task force will further review the impact of the noise proposals. This task force will closely examine the critical issue, which is the availability of "quiet" aircraft. All interested parties including carriers, manufacturers, and representatives of the local community will be asked to supply information as part of this review. All parties are asked to cooperate in this effort. The task force will also consider appropriate noise levels and implementation dates as well as alternative types of noise standards.

Although the uncertainty of potential impact of the proposed daytime (7:00 a.m. to 10:00 p.m.) noise limits necessitates delay of their implementation, there is no similar reason to postpone the nighttime (10:00 p.m. to 7:00 a.m.) limits. Some commenters state that these standards also conflict with nationwide compliance schedules. However, the certification standards of FAR, Part 36, and the noise compliance program of Part 91, Subpart E, permit differing local standards and disclaim any intention of specifying

[2] It might be argued that a carrier having to move service to Dulles would be placed at a competitive disadvantage. However, as the programs for increased utilization of Dulles become effective and more traffic begins to utilize that facility, any perceived competitive advantage to National is likely to disappear. Moreover, as more air service is operated through Dulles, there will be increased opportunity for carriers to obtain connecting traffic.

only about 5 percent of all of National's operations occur between 10:00 p.m. and 7:00 a.m.

Most of the carrier operations in these hours occur between 6:00 a.m. and 7:00 a.m. or between 10:00 p.m. and 11:00 p.m. and are conducted by commuters with piston or turboprop aircraft. Unlike the situation with the daytime limits it is undisputed that the commuter carriers have quiet, suitable aircraft that meet these standards available for commuter use. Therefore, the nighttime noise standards are achievable without imposing serious, impractical repercussions on the air carrier industry. It should also be noted that the FAA provides the Washington area and the national aviation community with an unrestricted 24-hour facility at Dulles where the aircraft that do not comply with National's nighttime noise standards are able to operate.

> The noise limits established under this rule are as follows: Departures, 10:00 p.m. through 6:59 a.m.: 7 dBA as determined on takeoff.
>
> Arrivals, 10:00 p.m. through 6:59 a.m.: 85 dBA as determined on approach.

The nighttime noise limits will apply to all aircraft operating in this time period regardless of when the operation was scheduled to occur, except that aircraft scheduled to arrive before 10:00 p.m. will be permitted to land at National if they have received an approach clearance before 10:30 p.m. If such a clearance is not received before that time, the aircraft will have to proceed to another airport if it cannot comply with the nighttime noise limit. It must be noted that the half-hour grace period does not pertain to departures from National; departures that occur after 9:59 p.m. in noncomplying aircraft will be in violation of these regulations.

For the purpose of compliance with this regulation, the noise level produced by an aircraft will be determined from FAA data on noise produced by aircraft types under standardized test conditions. It will not be determined on an operation-by-operation basis. The reference point will be the noise made by aircraft at the Federal Aviation Regulation Part 36 measuring points for approach and takeoff. The approach measuring point is 2,000 meters from the runway threshold under the flight path. The takeoff measuring point is 6,500 meters from the start of the takeoff roll under the flight path. FAA has compiled and tabulated measured or estimated noise data on almost all aircraft types at these points.

FAA Advisory Circular 36–3B, ''Estimated Airplanes Noise Levels in A-Weighted Decibels,'' November, 1981 (copy in this docket), or the latest version thereof will be used to determine the aircraft's noise and will be incorporated by reference into the regulation. Compliance will be based upon comparison with the data in the advisory circular, not upon a monitoring of individual aircraft operations. By using this method, aircraft operators will know if their type and model of aircraft will comply with the Washington National Airport noise limits before the operation occurs.

Adjustments based upon the gross weight of the aircraft will not be allowed. If adjustments in gross weight were allowed, it would be difficult to determine whether a given operation meets the noise level limit. Thus, a noncomplying aircraft type will not be allowed to reduce its weight and thereby claim to be in compliance with the rule. Requiring the aircraft to be able to meet the standard when operating at maximum gross weight provides an extra margin of assurance that the noise levels actually produced by the aircraft operating at night will be within the limits prescribed.

Some commenters state that the proposal should not be based upon the Advisory Circular, which they claim is inaccurate and is an incomplete document. However, the proposed noise limitations are based on mutually-consistent estimates of the noise levels generated by various aircraft, operated under directly comparable and repeatable standardized conditions. The criteria proposed are the simplest available, and are related directly to the noise-making characteristics of the various aircraft models and types. Although the Advisory Circular includes data on nearly 300 airframe-engine combinations, certain specific combinations may not be included. These data are available from the FAA's Office of Environment and Energy, if needed. Comparison of the tabulated data with those provided by manufacturers indicates good agreement, especially for aircraft which have been tested for noise certification. A few differences

variables under which aircraft operate. The "ranking" of the noise characteristics of various aircraft using standardized test procedures eliminates these variables to provide a consistent comparison among the various types.

FAA does not intend to enforce the noise limits by measuring the noise from individual aircraft operations at a point on the ground because such enforcement may cause pilots to attempt to "beat the meter" with power cutbacks and maneuvers which reduce noise at that one point. These maneuvers may actually increase noise exposure to other areas. In addition, such maneuvering around the meter may not be in the best interest of safety. Basing the noise limits on aircraft type and model eliminates these problems. Use of type also promotes consistency and predictability for operators. If each individual operation is measured, an aircraft that complies one day may not comply the next day because atmospheric conditions have changed. Noise levels for the same type of aircraft, following the same flight path, may vary within a range of 20 decibels due to meteorological conditions. Thus, even if a pilot flies exactly the same pattern and operating procedure during each flight, he cannot be assured that he will not exceed a set noise level at one or more microphones on the ground.

ATA claims that the proposal used "three confusing and inconsistent measurements of aircraft noise (i.e., peak dBA, SEL, and EPNdB)." The noise certification standards of FAR, Part 36, initially issued in 1969, incorporate Effective Perceived Noise Level in decibels (EPNdB) as the unit of measurement. This unit was then, and continues to be, the most reliable indicator of public annoyance with aircraft noise. It is a somewhat complex unit, however, and cannot be measured directly by ordinary instrumentation. For land-use compatibility purposes, the A-Weighted Sound Level (dBA) is used primarily and has been adopted broadly for representing noise impacts on community activities (see "Guidelines for Considering Noise in Land Use Planning and Control," Federal Interagency Committee on Urban Noise, June 1980, and American National Standards S3.23–1980, "Sound Level Descriptors for Determination of Compatible Land Use"). This unit was adopted as the single system of measuring single-event noise at airports in FAR, Part 150, and is appropriate for use in imposing noise limitations for aircraft. It is directly measurable, using relatively unsophisticated instrumentation. A-Weighted Sound Level (dBA) is also the noise unit specified in FAR, Part 36, for noise certification of small propeller-driven aircraft. No noise limitations are specified in terms of Sound Exposure Level (SEL).

During the comment period, a great deal of concern was expressed about the nighttime noise limits. The supplement to the Environmental Impact Statement indicates that an aircraft type that produces a takeoff noise level of 72 dBA[3] or less, measured at maximum gross weight under FAA aircraft takeoff noise certification conditions, will produce no increase in the cumulative noise to which the community around National is exposed. That is, aircraft that can meet this nighttime noise limitation can operate at National without measurably altering the noise exposure as depicted in FAA's August 1980 Environmental Impact Statement (EIS) on the Metropolitan Washington Airports Policy.

A limit of 72 dBA for takeoff noise at the certification measuring point (6,500 meters from the start of the takeoff roll) will not produce noise levels that intrude upon any residences in the area. No large jet aircraft will be able to take off under this standard. Therefore, air carrier activity, except for some commuter operations in complying turboprop aircraft, will be greatly diminished. Also, some small general aviation jets can meet this standard. For the quieter aircraft that do operate, procedures will be in effect which direct operations to be over the Potomac River for a certain distance (10 miles north or 5 miles south) or until an altitude of 2,000 feet is reached. Under these procedures, the 72 dBA contour does not include any residential areas and, according to the environmental study, persons inside their homes will be exposed to no more than 50–55 dBA. This level should cause no interference or annoyance to most persons, even at night.

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[3] A-weighted decibels are decibels measured with an adjustment that emphasizes sound frequencies heard by the human ear, as opposed to treating all measured frequencies equally.

aircraft that will be permitted under this regulation. An approach noise level of 85 dBA, measured under certification conditions, will not alter the cumulative noise level contours, as depicted in the August 1980 EIS, and will not intrude upon residences. An aircraft which produces 72 dBA under the specified takeoff conditions will measure approximately 85 dBA under the specified approach conditions. Thus, 85 dBA on approach is set as the level not to be exceeded. According to the Environmental Impact Statement, persons inside their homes along the Potomac River corridor will be exposed to no more than 50–55 dBA as a result of such approaches, and this should cause no interference or sleep interruption.

Several comments were received about the appropriateness of using the Federal Aviation Regulation Part 36 noise testing procedures. Part 36 specifies three noise tests and includes the manner in which the test aircraft must be operated for those tests. Part 36 also specifies standard meteorological test conditions and the manner in which the test results are corrected for nonstandard conditions or operational procedures. Thus, Part 36 provides standardized and repeatable tests through which aircraft noise may be measured accurately and consistently.

The noise limitations adopts two of the three Part 36 tests as criteria for determining the relative noisiness of aircraft models and types, and for determining which aircraft may be used for nighttime operations at Washington National Airport on the basis of noise. The possible paradox from having two noise criteria during the night is acceptable since, for example, an aircraft which can meet the arrival noise limit, but not the departure noise limit, may land during nighttime hours and depart the following day. As noted above, the nighttime arrival noise limit of 85 dBA is approximately the same degree of stringency as the nighttime departure noise limit of 72 dBA. As tabulated in the Final Supplement to the August 1980 Environmental Impact Statement, the aircraft models and types which meet one criterion generally meet the other criterion also.

At present, on an average night, there are 50–55 operations between 10:00 p.m. and 7:00 a.m. and only 10–25 operations between midnight and 7:00 a.m. Approximately 12–18 operations after 10:00 p.m. are by aircraft that exceed the adopted noise limit. These aircraft will no longer be permitted to operate during the night hours. It is possible that the number of operations of complying aircraft will increase. Some commuter air carriers may provide late night and early morning scheduled connecting services with complying aircraft. This could add an estimated 4 to 16 operations to National. However, FAA does not expect any significant increase in nighttime air carrier traffic.

Compliance will be determined at the time the aircraft is cleared for takeoff or at the time the aircraft is cleared for approach. The half-hour grace period for scheduled arrivals will allow for delays en route. The FAA expects that air carriers will schedule operations realistically to arrive before the 10:00 p.m. time period. An operation which frequently arrives past its scheduled time of arrival will not meet this criterion. If monitoring reveals that the carriers are abusing the grace period, the FAA may take additional regulatory action.

It must be emphasized that this limited exception will only apply to arrivals. The noise limits applicable to departures are based upon the actual time of departure, not the scheduled time. Therefore, to assure that their aircraft can comply with the rule, the air carriers may be expected not to schedule operations close to 10:00 p.m. This should have the effect of further reducing noise in the 9:00 p.m. to 10:00 p.m. hours.

Some commenters stated that the strict arrival and departure time deadlines do not take into account air traffic delays or weather problems. However, the carriers can make scheduling adjustments to anticipate these types of problems. Carriers often take similar types of restraints into consideration when they schedule operations. Those carriers that anticipate that it will be difficult to schedule late night operations as a result of these requirements are reminded that those operations can be accommodated at Dulles or BWI.

Several commenters suggested that the nighttime noise limits be replaced by voluntary agreement. Recent experience has clearly shown that some air carriers are not reluctant to ignore voluntary agreements.

2. Airline X has an operation scheduled to depart at 9:45 p.m. and does depart as scheduled. No noise limit applies for that particular aircraft.

3. Airline X has an operation scheduled to arrive before 10:00 p.m. and the aircraft has not been cleared for its approach until 10:35 p.m. That aircraft must be able to meet the 85 dBA noise limit as generated on approach. If the aircraft is not capable of meeting that noise limit, then the operator would be required to divert to another airport. Had the aircraft been cleared for its approach before 10:30 pm., no noise limit would apply.

Persons who violate the regulation by operating an aircraft type or model that does not meet the applicable noise level would be subject to civil penalties as well as arrest and criminal penalties of up to a $500 fine and up to 6 months imprisonment. Section 4 of the Act of June 29, 1940, under 54 Stat. 686; as amended by the Act of May 15, 1947, 61 Stat. 94; and the Federal Aviation Act of 1958 as amended, 49 U.S.C. 1301, et seq.

Some commenters have stated that the noise proposal is inconsistent with Federal Noise Abatement Regulatory Procedures as established in the Aviation Safety and Noise Abatement Act (ASNA Act), Section 105, which requires preparation of noise exposure maps and noise compatibility programs for National and Dulles by February 28, 1982. That requirement does not prohibit establishment of an operating policy prior to those actions. The policy is consistent with FAR, Part 150, mandated by the ASNA Act. FAR Part 150 specifically established A-Weighted Sound Level as the unit for measurement of single event noise at airports, not SEL (Sound Exposure Level). Further, there has been no evidence presented to FAA which shows that Part 150 fails to establish a highly reliable system of measuring noise. Therefore, this criticism is unfounded.

Other commenters stated that these standards are inconsistent with the Federal Aviation Act. The statutory tests of Section 611(d) of the Act were considered in adopting the noise limitations. They are consistent with the public interest in maintaining a responsive system of air transportation in the face of local opposition to the amount of noise at National; they are technologically practicable, inasmuch as the noise reduction technology, to satisfy the noise limits, has been demonstrated and is available; and they are effective in reducing noise.

ATA comments that the Draft Supplemental EIS is deficient in that it does not evaluate the ''real costs'' of the proposed policy. Monetary costs and benefits are assessed in the Regulatory Evaluation, not the EIS. The intent of the EIS is to evaluate the environmental consequences of alternative actions (policies), but not necessarily expressed in monetary terms. In response to comments that the apparent differences in the noise impacts found in the August 1980 EIS and the July 1981 Draft Supplemental EIS are not explained, these differences are explained in the Final Supplemental EIS (page III-1, *et. seq.*). ATA comments that all reasonable alternatives were not analyzed, and that those not considered were not identified. The August 1980 and the Supplemental EIS's identified 35 alternatives and provided full analysis of 8 of these. In keeping with CEQ regulations, the Final Supplemental EIS is concise and no longer than necessary to meet regulations (40 CFR 1502.2(c)). ATA also believes that the proposed ''scatter plan'' for National should have been considered, along with ''the encouragement of compatible land-use controls and voluntary limits on operations during hours sensitive to noise.'' The ''scatter plan'' was explicitly excluded from consideration (Final Supplemental EIS, page III-11) since its benefits, if any, will be equally effective under whichever policy may be adopted. The encouragement of land-use controls and the voluntary curfew have already been in effect and proven unsatisfactory.

Since the implementation of the nighttime noise levels will require some adjustment to air carrier schedules, these levels will not become effective immediately. Approximately 90 days, the same lead time necessary for submittal of schedules under the Interim Operations Plan, is a sufficient amount of time to complete the necessary adjustments required by this rule. Therefore, the noise levels contained in § 159.40 will become effective on March 1, 1982.

short runways in rain and in poor visibility. There is also concern over the appropriateness of these aircraft consistently using the curving approach to National's Runway 18 which, due to wind conditions, is used for approximately 45 percent of all arrivals. Also, there are possible groundside problems. The maneuvering area required for these aircraft could pose wing-tip clearance problems at National. Also, the ramp and taxiway areas affected by the engine exhaust velocities of the larger aircraft are significant. These areas are already extremely limited at National. The terminal and roadways currently experience extreme pedestrian and vehicle congestion during peak hours. The additional surge of passengers occasioned by widebody aircraft and persons meeting them or accompanying them to the airport has the potential to swell the peak hour demands on the airport's facilities to cause even greater delays. While the facility problems might be corrected with physical redevelopment, that remedy is at least several years away from fruition.

Some commenters have asked whether the FAA's standards for use of wide body aircraft at National will be different from the standards used for other airports. While airports may be similar in many respects, each airport presents unique operational considerations which must be independently assessed in connection with proposed aircraft service into that airport. Although many of the standards to be applied for the acceptance of service at National will be similar to those used at other airports, there are considerations such as the curved approach from the North that are peculiar to National that the Administrator will weigh in making his determinations.

Consequently, wide-body and new technology aircraft will not be allowed to use National until these critical safety issues are resolved to the satisfaction of the Administrator. Moreover, the Director will have the authority to request the air carrier to submit a plan describing how the aircraft operation would be compatible with the airport's facilities, including a description of the scheduling and gate positions to be used. The Director may withhold permission to use the airport for wide-body operations until the compatibility of the operation with National Airport's apron, gate, baggage and passenger handling, or roadway facilities is resolved.

5. *Nonstop Service Restrictions.*

The amendment to § 159.60 establishes the nonstop perimeter for Washington National at 1,000 statute miles, with no exceptions. This will change the existing regulation, which prohibits nonstop operations to and from National beyond 650 miles except for seven cities located between 650 miles and 1,000 miles away. This would permit cities beyond 650 statute miles, but closer than the grandfathered cities, to have nonstop service via National. Cities of equal distance would be treated equally. The perimeter would maintain the long-haul nonstop service at Dulles and BWI which otherwise would preempt shorter haul service at National. This is most consistent with the roles proposed for National Airport as a short/medium-haul facility and for Dulles as an unrestricted facility available for all types of operations.

The existing 650 mile regulation was adopted on May 26, 1981 as interim measure to preserve the longstanding voluntary nonstop restrictions pending this Department's review of the entire MWA Policy including the 1,000 mile proposal (46 FR 28632; May 28, 1981). That amendment was in response to announcements by various carriers that they intended to commence new nonstop service in violation of a longstanding agreement to limit nonstop operations to and from National. Prior to that date, and since 1966, the 650-mile perimeter with seven exceptions existed by agreement between the FAA and the air carriers. In 1966, concern over the introduction into National of jet aircraft such as the Boeing 727 led to the perimeter agreement that was approved by the Civil Aeronautics Board on May 25, 1966. The agreement was intended to avoid conflict with the further development of Dulles Airport. Dulles opened in 1962 and was designed for a long-haul jet aircraft services. The airlines agreed to the 650–mile perimeter in order to preserve the long-haul and short-haul roles prescribed for Dulles and National. Cities that were beyond 650 miles, but within 1,000 miles, were permitted to maintain nonstop service to National if they had nonstop service as of December 1, 1965. These cities to which service has been maintained to the present, are Minneapolis, St. Louis, Memphis, Miami, Orlando, Tampa, and West Palm Beach.

It was not FAA's intention to cause significant changes in service patterns as eliminating the perimeter, or as establishing a 500-mile or 650-mile perimeter without the grandfather cities, would do. Although more cities will now be eligible for nonstop service via National, the intermediate stop eliminated by the carriers is most likely to be at one of the heavily served hub airports at Atlanta, Chicago or St. Louis. Therefore, this amendment is not expected to create a significant change in service patterns or to affect service to smaller communities. It is not an expansion of the perimeter beyond the 1,000 mile nonstop distance permitted today. The longer haul nonstop flights from Washington to markets such as Denver, Colorado, Dallas and Houston, Texas, and beyond will remain at Dulles or BWI.

Both the 650-mile and the 1,000 mile perimeter regulations have been challenged in a lawsuit brought by various parties. (*City of Houston v.* FAA, Fifth Cir. No. 80–2030, and consolidated cases Nos. 80–2251 and 81–4194). The principal legal issues are whether the FAA has authority to restrict the stage length of commercial air carrier flights to and from National, whether that authority is being exercised in a reasonable fashion, whether certain constitutional provisions are being violated, and whether the FAA's rulemaking procedures were proper. As proprietor of both National and Dulles Airports, FAA is empowered to promulgate regulations differentiating between the kind of air service provided at those airports. Furthermore, this amendment is not in violation of either the constitutionally protected right to travel or the constitutional prohibition against laws giving preference to the ports of one State over the ports of another.

It must be noted that by letter dated October 14, 1981, Pan American World Airways, one of the litigants challenging the existing perimeter rule in Court, has reversed its position. Pan Am stated that:

> "it finds the proposal [NPRM] to represent a fair and reasonable approach that will resolve the future of National and permit air carriers to make long-range plans concerning equipment purchases and route structuring . . . Pan Am initially had opposed the proposed 1,000 miles nonstop perimeter at National among other features of the proposed policy, because of its desire to provide nonstop service between National and such mid-continent cities as Houston, Texas. While Pan Am still hopes that nonstop Washington National/Houston service may one day be possible, it has concluded that DOT's overall policy is equitable and deserves Pan Am's support."

The City of Houston and several airlines have contended that the regulation discriminates against the cities that lie beyond the perimeter and imposes a competitive disadvantage on the airlines that serve them by requiring an uneconomical stop. The City of Houston has also contended that the perimeter fails to accomplish FAA's objective of maintaining distinctive long-haul and short-haul roles because many travelers prefer one stop and multiple stop flights from National to points beyond the perimeter rather than nonstop flights from Dulles.

The institution of the 1,000 mile perimeter in this amendment is not inconsistent with the Airline Deregulation Act of 1978 since Dulles, which is also under the direct control of the FAA, is available to any carrier wishing to serve Washington, D.C., from a point outside of the perimeter. FAA is charged by law with the proprietary responsibility for National and Dulles Airports and has been granted the power to regulate for the protection of the airports. As stated in the NPRM, "It is FAA's responsibility and not the responsibility of distant communities to ameliorate the Washington area's local problems of noise and congestion created by National Airport." The differentiation between Dulles and National, as fostered by the perimeter, is a proper way of preventing the imbalances in the use of the Washington's airports. DOT's commitment to provide the airport services needed for Washington, D.C., is not diminished by the perimeter. As the proprietor of both airports FAA can legally assure the availability of Dulles Airport (there are no restrictions on service at Dulles) to serve the needs of air commerce to and from the Washington Metropolitan Area. Also, the perimeter rule does not preclude nonstop service to Washington from anywhere in the country via Dulles Airport or BWI. Points beyond the perimeter currently receive one stop service via National and nonstop service via Dulles or BWI; nothing in this rulemaking should cause any deterioration of that service.

at Dulles and constitute approximately one third of all of the daily domestic service at that airport. In the absence of the perimeter, it is likely that the one stop flights to these cities from National will become nonstop flights and the nonstop service will be moved from Dulles. The loss of service to these cities could cripple the domestic service patterns at Dulles thereby leading FAA away from the purposes of this MWA Policy: Finding a solution to the over concentration of activity at National.

Finally, FAA does not agree with the contention that National is the airport of preference for almost all air travelers to and from the Washington area. FAA believes that a significant number of travelers would prefer to use Dulles if the flights were available. For example, the flights by American Airlines from National to Dallas-Fort Worth via Dulles have produced significant load factors at Dulles. On an average, 42.5 percent of the passengers board or disembark at Dulles, indicating that Dulles is the preferred airport for a significant number of travelers in this market.

National Airport will always be more convenient to downtown Washington. However, the population growth in the areas west of the District of Columbia has been very substantial and that growth trend will continue. The COG forecasts show that Montgomery County, Maryland, and other northern Virginia communities will experience rapid and substantial growth. And while the District will remain the employment center, for the foreseeable future, COG forecasts that there will be approximately 300,000 employees in Fairfax County in 1990. It will be the most populous jurisdiction in area is 45 minutes or less. It is now approximately 50 to 60 minutes from the downtown area, and this time will be reduced when the access highway and Interstate 66 are connected as envisioned when the Dulles Airport was planned. FAA will continue to make efforts to improve travel time to Dulles, but FAA does not consider today's travel times to be excessive or burdensome.

6. Nonregulatory Aspects.

The nonregulatory aspects of the policy proposed here are essentially the same as the policy adopted in August 1980. Appropriate master planning and small scale rehabilitation and improvement of the facilities at National will be undertaken by the Director of the Metropolitan Washington Airports, and FAA will continue with plans to improve ground access to Dulles.

General Comments

Slot Allocation.

The reduction in air carrier slots from 40 per hour to 37 has been criticized for exacerbating the already stressed slot allocation issues surrounding National. Although some commenters stated that implementation of an allocation mechanism should be a part of this policy, DOT notes that the slot allocation issues are being addressed through the mechanism of a separate rulemaking which is currently open. In the meantime, DOT hopes that the airline scheduling committee process will continue to function until the Department completes analysis of the alternatives. If the scheduling committee does not agree upon a slot allocation for a scheduling period, then DOT reserves the right to allocate the slots by direct allocation, by a slot auction, or by other appropriate procedures. These allocation alternatives are discussed in a separate rulemaking (Notice 80–16) issued by DOT on October 21, 1980.

If DOT is forced to allocate slots directly, a procedure will be utilized which provides sufficient flexibility to meet the demands for existing service. The establishment of a base period for any necessary allocation will reflect the concerns expressed by the House of Representatives in the FY 1982 DOT Appropriations Bill passed by the House on September 10, 1981. Therefore, DOT will be considering the average daily number of operations conducted by each carrier during the week of July 26, 1981, as the basis for any slot allocation as opposed to any prior slot assignments.

Any DOT allocation, consistent with concern expressed in Senate Report No. 97–253 on the Department of Transportation and Related Agencies Appropriation Bill, 1982, will strive to minimize shifts in existing service which might be detrimental to the traveling public. At the same time, DOT is committed to competitive access at National Airport. Under its present rules, the Airline Scheduling Committee provides

to another Washington Airport. These decisions, however, are not inconsistent with a competitive air transportation system since they are made by carrier management in its sole discretion.

Small Community Service.

Commenters expressed concern over maintaining slots for carriers who serve small communities. The Department is aware of the trend of the larger air carriers to discontinue service to such markets in favor of the higher volume markets. However, this trend by the carriers to concentrate on larger markets is national in scope and is clearly not a result of the Metropolitan Washington Airports Policy. The amendment will not produce a substantial reduction in the number of actual operations occurring today. There can be no assurance, however, that any additional air carrier or air taxis slots at National Airport would be used to serve smaller communities.

Even with slot reductions at National, no community will be deprived of air service to Washington, D.C., because of an unavailability of airport facilities. Dulles Airport will remain available to accommodate all air service to the Washington metropolitan area.

Precedential Effect.

Several commenters raise questions about the proposals in general. Some commenters suggest that other airport proprietors might issue limitations similar to those promulgated for National. They argue that this could have national implications. These rules, however, are issued under unique circumstances. They are being issued by the Federal proprietor of two airports serving the same metropolitan area. The nighttime noise limits at National are tailored for the conditions existing there and are not necessarily appropriate for other airports nor do they create any new authority for other proprietors. Similar regulations could violate constitutional, statutory, or contractual requirements if imposed at particular airports.

Air Traffic Controllers Strike.

Several commenters have suggested that because the air controllers' strike has reduced the number of flights at National below the level which the policy would authorize, there is no need to put the policy into effect. The FAA disagrees. A policy for Washington airports has been under consideration for years and its goals are long term goals, transcending the effects of the temporary air traffic reductions due to the strike. All aspects of the policy have been thoroughly considered. After all of the effort, including a vast amount of public input, postponement, even temporarily, would be inconsistent with achieving the long term goals of the policy.

In addition, promulgation of these rules at this date will have a minimal affect on the system. No carrier will have to reduce flights, since the current number of operations at National is below the number that will be available under the policy. Therefore, immediate implementation of the policy will not result in any disruption or hardship. This would not be the case if the policy were deferred until after operations return to their pre-strike level. Furthermore, there are aspects of the policy, such as the nighttime noise level restrictions, that will have an immediate effect even with the current reductions. For these reasons, issuance of this policy will not be further delayed.

Petition of New York Air for Clarification or Interpretation

On February 20, 1981, New York Air petitioned the FAA to clarify or interpret the High Density Rule (FAR Part 93, Subpart K) to give high priority access to operations in the Northeast Corridor. While not specifying the changes sought, New York Air's petition essentially seeks to have slots for the Northeast Corridor set aside or not counted in the regulation which restricts the number of scheduled operations at La Guardia Airport as well as at Washington National. The petition asserted that there is extensive demand for air service within the corridor and criticized the regulation as being biased in favor of the Eastern Airlines Shuttle because extra section operations do not require a slot.

As to petitioner's complaint that the exemption for extra sections has been misused, FAA intends to make certain that such misuse does not occur. But FAA does not view the fact that Eastern has chosen to operate a shuttle, in a way that the rule permits, as placing New York Air at an unfair competitive disadvantage. The rule's provisions, its exceptions, as well as its restrictions, are available to all carriers.

For these reasons, New York Air's petition is denied.

Revocation of Prior Metropolitan Washington Airports Policy

FAA has decided that to minimize any possible confusion, it will not amend the policy issued in August 1980. Rather, that policy, and implementing regulations issued on September 15, 1980 which were to be effective on November 30, 1981, are hereby revoked, and replaced with this policy statement and implementing regulations. Therefore, Amendments 93–37 and 159–20 (45 FR 62406; September 18, 1980) are revoked.

Effective Date

These regulations are effective on December 6, 1981, except that § 159.40 (Nighttime Noise Limitations) is effective on March 1, 1982. The revocation of Amendments 93–37 and 159–20 is effective on November 23, 1981. In large measure, these actions will relieve restrictions. If these actions were delayed further, the former policy would become effective for a limited period of time or would have to be delayed for a limited period of time on an emergency basis. Therefore, good cause is found for making this amendment and revocation effective less than 30 days after FEDERAL REGISTER publication.

Final Rules

Accordingly, Subpart K of Part 93 of the Federal Aviation Regulations (14 CFR 93) and Subpart C of Part 159 of the Federal Aviation Regulations (14 CFR 159) are amended, effective December 6, 1981, except § 159.40 is effective March 1, 1982.

Amendments 93–37 and 159–20 (45 FR 62406; September 18, 1980) are revoked, effective November 23, 1981.

(Secs. 103, 307(a), (b) and (c), 313(a), of the Federal Aviation Act of 1958, as amended (49 U.S.C. §§ 1303, 1348(a), (b) and (c), and 1354(a)); Secs. 2 and 5 of the Act for the Administration of Washington National Airport, 54 Stat. 688 as amended by 61 Stat. 94; Sec. 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 6 of the Department of Transportation Act (49 U.S.C. 1655).)

NOTE—As a result of a request by the Director of the Office of Management and Budget under the criteria of Executive Order 12291, this regulation is classified as a "major" regulation. The Director has given a waiver from certain of the requirements of the Executive Order for this rulemaking. Since the regulation would make minor changes to an issued regulation, it is not considered to be significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A final, regulatory evaluation is included in the rules docket. Finally, it will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

commuter hours via the carpool entrances and exits at Reston Avenue and Trap Road. Prior to these amendments the highway has been restricted to airport users and 4-person carpools. The amendment allows single vehicles, as well as carpools, with a decal to use the highway by "backtracking" through Dulles Airport.

This amendment is effective November 21, 1983, and will terminate on January 1, 1985, or on the date that the Dulles Toll Road is opened by the Commonwealth of Virginia, whichever is earlier. The FAA will publish the termination date.

FOR FURTHER INFORMATION CONTACT: Dexter Davis, Airport Manager, AMA–200, Dulles International Airport, P.O. Box 17045, Washington, D.C. 20041, Telephone: (703) 471–7596; or Edward S. Faggen, Legal Counsel, AMA–7, Hangar 9, Washington National Airport, Washington, D.C. 20001, Telephone: (703) 557–8123.

SUPPLEMENTARY INFORMATION: Interested persons were invited to participate in the making of the policy for carpool use of the Dulles Airport Access Highway by a Notice of Proposed Rulemaking published by the FAA on June 6, 1983. (Notice No. 83–5, 48 Fed. Reg. 25215). A supplemental notice was published on August 18 (48 Fed. Reg. 37430, Notice 83–5A). An environmental assessment was prepared by the FAA and the Federal Highway Administration and placed in the public docket for review. Written comments were received from area citizens who use or want to use the Access Highway for commuting between their residences and workplaces. Comments were received from the Commonwealth of Virginia and elected representatives of the public at both the Federal and local levels. Comments were also received from the United States Department of Interior, the National Capital Planning Commission, the Metropolitan Washington Council of Governments, the Air Transport Association and other organizations.

Action: Upon consideration of the comments and other pertinent information, FAA is adopting a regulation that lowers the carpool requirement from 4 or more persons per vehicle to 2 or more persons for vehicles entering and exiting the Access Highway via the carpool ramps at Reston Avenue and Trap Road. Single occupant vehicles (driver only) as well as carpools will be permitted to enter the Access Highway at all westbound entrances and proceed west to the airport, turn around at a designated point and proceed back eastbound. Two and 3-person carpools and single occupant vehicles must display a carpool decal in order to use the Access Highway. The decal will be easily identifiable and will have to be permanently affixed to the vehicle bumpers. The decals will be readily available at Dulles Airport and other locations in the Dulles Corridor.

Airport users will continue to have use of the Access Highway without restriction. The rule is interim in nature. Except for emergencies carpools and other non-airport uses of the Access Highway will be discontinued on January 1, 1985, or on the day the Dulles Toll Road opens, whichever is earlier.

Background

The Dulles International Airport Access Highway (Access Highway) is owned by the United States and maintained by the Department of Transportation (DOT), Federal Aviation Administration (FAA). The Administrator of the FAA, in accordance with a delegation of authority from the Secretary of Transportation has the responsibility for the care, operation, maintenance, improvement and protection of Dulles Airport, including the Access Highway, and the Administrator has the authority to make and amend regulations in order to carry out this responsibility.

The Access Highway was built to provide rapid ground access from Washington, D.C., to Dulles Airport, which is located near Chantilly, Virginia, 26 miles from the downtown metropolitan center. The Access Highway was built in 1962 to accommodate airport traffic. To achieve this, the airport traffic was to be separated from commuter and local traffic. Since it has been open, the Access Highway has been restricted in general to airport-related traffic. The entrances and exits facilitate traffic to and

at Route 28 to travel to the airport, turn around, and use the highway eastbound. The reverse movement is allowed for carpools exiting at Route 28.

It is the FAA's intention that all non-airport uses of the Access Highway (other than emergencies) will cease when the high capacity, parallel roadway is completed. The Commonwealth of Virginia is presently constructing the lanes parallel to the Access Highway known as the Dulles Toll Road. The new highway is scheduled to open late in 1984 or early in 1985.

In addition to airport users, many residents and employees in the area use the Access Highway for commuting by proceeding west to the airport for the purpose of making a U-turn and then proceeding back eastbound. This has come to be known as "backtracking" and it enables commuters to avoid congested alternate routes. The practice is widespread. A detailed study in 1981 indicated that 6,400 cars entered Dulles Airport each day solely to reverse their direction of travel. Recent FAA police studies indicate that the number of daily commuter vehicles has increased to approximately 8,000. The practice has resulted in congestion on the airport roadways, particularly on the portion of the Access Highway between Route 28 and the Dulles terminal.

The Access Highway—I–66 Connection

FAA is completing the construction of an extension to the Access Highway from its present terminus at Route 123 to join I–66 near West Falls Church. The extension is to be completed and open to traffic at the end of October 1983. Travelers driving between Dulles and downtown Washington via the Access Highway and I–66 will have the use of a free-flowing highway for the entire length of the trip. This will produce a 10–15 minute savings compared to the present routing and should be a significant benefit to Dulles Airport users.

Since its opening in December, 1982, traffic on I–66 between I–495 and the Theodore Roosevelt Bridge over the Potomac River has been restricted to high occupancy vehicles with 4 or more persons (HOV–4) during morning and afternoon peak commuter hours in the peak direction. The restrictions on I–66 were developed based on environmental studies and were incorporated into the January 5, 1977 decision by Secretary of Transportation Coleman as a response to the controversy over the environmental impact of I–66. The HOV–4 restrictions are enforced by Virginia Commonwealth and local police.

When the Access Highway connection to I–66 is completed this year, airport traffic will comingle with other traffic on I–66. During peak hours, legitimate airport traffic will be exempt from the HOV–4 restrictions as set forth by Secretary Coleman's decision. Other users of the Access Highway, including commuters, would also be able to gain access to I–66, which could be a violation of the HOV–4 restrictions. FAA has recognized from the time of the I–66 decision in 1977 that, when the connection of the Access Highway to I–66 was completed in 1983, commuter use of the Access Highway would have to be controlled. FAA, therefore, must now take action to control commuter use of the Access Highway to ensure that only airport-related traffic and HOV–4 vehicles enter I–66 by way of the Access Highway. It would have been ideal if the parallel lanes of the Dulles Toll Road were available to receive the local and commuter traffic that must be regulated after the Access Highway/I–66 connection is open. While the construction of the parallel lanes is progressing at a rapid pace, they will not be open until late 1984. Accordingly, FAA undertook this rulemaking action to determine the appropriate course to take in the interim period.

In Notice 83–5, FAA proposed to reduce the carpool requirement on the Access Highway (between the Airport and Route 123) from 4 or more persons to 2 or more persons per vehicle until January 1, 1985. The intent was to allow more commuters to gain lawful access to the Access Highway at the ramps now used by 4-person carpools until the toll road was open. Commuter vehicles would have to display a permanently affixed decal. Those vehicles with fewer than 4 occupants would not be permitted to use I–66 when HOV–4 was in effect.

The comments received on Notice 83–5 indicated that the proposal for 2-person carpools, while welcome, did not go far enough in addressing the problem for commuters in the Dulles corridor. Many

This alternative has several variations. Essentially, vehicles with a decal would be permitted to enter the Access Highway at one or more locations but could not use the connector road or I–66 without complying with the I–66 restrictions. This approach, it is urged, would keep thousands of vehicles that currently use the Access Highway from having to travel on already congested alternate routes. Also, it would be the least disruptive of established commuting patterns during the period that the Dulles Toll Road is under construction.

With this Notice, FAA is clarifying to parties interested in Notice 83–5 that although the proposed rule was drafted in terms of 2- and 3-person carpools, the scope of alternatives before FAA includes the option of adopting a commuter vehicle rule without an occupancy requirement in some form as well as the alternative of retaining the 4-person carpool requirements. Interested persons should consider this range of alternatives in presenting their comments.''

Issues Presented

The comments overwhelmingly supported the proposal to lower carpool requirements from 4 persons to 2 persons at the Reston Avenue and Trap Road entrance to the Access Highway. There was also considerable support for the continuation of backtracking through Dulles by persons driving alone. From the context of the comments, it is clear that the supporters of greater commuter access understand that the non-airport use of the Access Highway will be temporary, that is, until the toll road opens, that airport users must not be detrimentally impacted, and that the I–66 policies must not be compromised.

The rules adopted by FAA today accomplish each of these objectives.

FAA has protected the Dulles Access Highway for airport use for the entire twenty-one years of the highway's existence. It has been, and remains, the FAA's obligation to preserve the Federal Government's interest in the Access Highway. That interest is to provide access at a high level of service to Dulles Airport. The Access Highway was not built to accommodate local traffic needs. Commuter arteries are the responsibility of the state and local jurisdictions.

Today FAA is modifying the longstanding policy only because the Commonwealth of Virginia is now irrevocably committed to the construction and operation of a local service road in the Dulles Corridor. The Dulles Toll Road, which is being built parallel to the Access Highway in an easement from the FAA, is under construction and will be completed in approximately 15 months. At that time, all non-airport use, except emergency uses, will be excluded from the Dulles Access Highway. The Commonwealth of Virginia ''strongly supports'' FAA's intention to prohibit all non-airport use of the Access Highway when the parallel lanes are completed. The Commonwealth is concerned that if local traffic is permitted to use the Access Highway after the parallel lanes are completed the viability of those lanes would be jeopardized. FAA agrees, and in view of the Federal interest identified above, FAA will not permit non-airport uses of the Access Highway to continue after the parallel lanes are open.

For the interim period, opening the Access Highway as we do today will not undermine the Federal interest. In this regard, the FAA disagrees with the National Capital Planning Commission (NCPC) and the Transportation Planning Board (TPB) of the Metropolitan Washington Council of Governments. In its written comments, NCPC reiterated its longstandIng policy in favor of maintaining the Access Highway ''as a limited access roadway for the exclusive use of airport users.'' The NCPC and the TPB are concerned that additional carpool use will cause congestion on the Access Highway and at the interchanges of the Access Highway and Reston Avenue, the Access Highway and I–495 and at Route 123.

The traffic studies performed for FAA by the Federal Highway Administration do not project unacceptable delays and congestion at any point along the Dulles Access Highway during the approximately 15 months that this rule will be in effect. The total number of backtracking vehicles should decrease, under the rule, from the present high levels since 2- and 3-person carpools will not have to backtrack to gain access to the highway. Traffic volumes are not expected to cause traffic backups at the exits to I–495 and Route 123.

related problem is anticipated at these bus stops. The shoulder area on the right side of the ramp serves as a bus transfer point and a drop-off point for bus riders. There is no need for the pedestrian traffic that is transferring between buses, or persons who are waiting for a bus, to cross the lanes of automobile traffic. If it is necessary, normal traffic management techniques can be employed to assure continued pedestrian safety. As for transit ridership, only a slight decrease is expected due to a shift to 2-person carpools. There will be a greater incentive to use the bus after the Access Highway is connected to I–66 because the buses, and 4-person carpools which already use the Reston ramps, but not 2- and 3-person carpools, will be able to use I–66 during the peak commuter hours for rapid travel into the District of Columbia. Two and 3-person carpools will have to exit the Access Highway at either I–495 or Route 123 as commuter vehicles do today.

FAA had traffic projections prepared for the proposal adopted today and for the alternative for allowing single occupant vehicles to use the carpool ramps to enter and exit Reston Avenue and Trap Road. At present, in the morning peak hour the total volume of traffic using the Reston Avenue ramps (eastbound and westbound) is approximately 620 vehicles. The rule adopted today is expected to increase that total by 400 vehicles. The alternative of allowing single occupant vehicles to use the carpool ramps would increase the total by more than 1,100 vehicles to more than 1,700 vehicles on the ramps. The afternoon peak hour totals would similarly increase. At Trap Road in the existing morning peak hour the carpool ramps are used by only 20 vehicles. This is expected to increase under the rule adopted today to 200 vehicles. Under the alternative of single occupant usage the total expected would be 755 vehicles.

The projected single occupant vehicle use of the carpool ramps would lead to congestion on both Reston Avenue and Trap Road. Also, under the single occupant alternative there would be a possible detrimental impact on Wolf Trap Farm Park from the congestion on Trap Road. No negative impact on Wolf Trap Park results from the rules adopted today. Further, unlike the rule adopted today, the proposal to allow single occupant vehicles to use the carpool ramps did not receive strong support from the community. For these reasons, among others, FAA is not allowing single occupant vehicles to use the carpool ramps.

In all, the advantages to the local commuters from the rule adopted today are greater than under the other alternatives. The Governor of the Commonwealth of Virginia, the Fairfax County Board of Supervisors and the Northern Virginia Transit Commission have all urged the adoption of these rules. Under these rules, existing commuters on the Access Highway will not have to be added to already congested alternative routes because the Access Highway and crossroads can accommodate the expected commuter traffic.

Because the Federal interest is not disserved by allowing commuters to use the Access Highway for a short term, FAA has decided to allow such usage in consideration of the Commonwealth of Virginia's construction of the parallel lanes. The FAA retains the power to change these rules, as necessary, if the interests of Dulles Airport are jeopardized in any way.

Decals and Enforcement

Although one of FAA's objectives is to accomodate commuter traffic on the Access Highway until the Dulles Toll Road is open, FAA is also particularly sensitive to the Commonwealth of Virginia's responsibility to enforce the use restrictions on I–66 as required by Secretary of Transportation Coleman in 1977. In commenting in support of increased commuter use on the Access Highway, Virginia Governor Charles Robb stated:

decals. The decals will allow the vehicles onto the Access Highway as commuter vehicles, but these vehicles will not be able to use I–66 without complying with the HOV–4 or other I–66 requirements. State Police will be enforcing the I–66 restriction on the portion of Access Highway between I–66 and Route 123. Vehicles with a decal will be treated as commuter vehicles and may be stopped and the driver fined if the vehicle is not in compliance with the I–66 requirements. Legitimate airport traffic can use I–66 regardless of the number of vehicle occupants and the vehicles without a decal will normally be deemed to be legitimate airport traffic by the State Police. However, these vehicles will not be permitted to use the carpool ramps which will be manned or to use the commuter turning points at the airport. FAA police will be enforcing the Federal regulations at the airport and the driver of a vehicle without a decal that backtracks through the airport is subject to ticketing for unauthorized use of the Access Highway. FAA and the Commonwealth of Virginia are prepared to take all the appropriate enforcement action that is necessary against violators of the Access Highway and I–66 regulations.

Loudoun County, Virginia, while otherwise supporting the easing of carpool occupancy requirements, did not endorse the decal aspect of the proposal. The FAA has concluded, however, that the decal is necessary to distinguish between commuter vehicles and airport traffic.

FAA will try to make the decal available in a way that imposes only a minimal burden on the public. The decal will be obtainable for a nominal one time fee to offset costs. The FAA will announce how and where decals may be obtained sufficiently in advance of the effective date of the regulation. No application forms will be required nor will any record be maintained of who obtains a decal.

Environmental Assessment

FAA, in conjunction with the Federal Highway Administration, has prepared an environmental assessment of this change to the carpool regulation. The assessment contains the traffic projections for the Access Highway, Route 28, Centerville Road, Reston Avenue, and Trap Road under each of the alternatives considered by the FAA. In 1980, the FAA prepared a detailed assessment of opening the Access Highway to 4-person carpools. At that time, the FAA concluded that the proposal would not have significant primary or secondary impacts upon the environment. The updated assessment of the change to the rules reveals no significant impact. The principal impacts relate to traffic flow and are secondary. Many persons who currently backtrack in single occupant vehicles to I–495 or Route 123 will form carpools to gain access to the same highways. Therefore, under the adopted rule, traffic on the Access Highway near the airport will decrease. There will be a slight increase in traffic volume east of Trap Road. There will be an increase in congestion at the Reston Avenue interchange. While reordering the flow of traffic somewhat in Fairfax and Loudoun Counties, the 2-person carpool is not likely to affect the volume or type of traffic passing through Arlington County, Virginia or other communities between the District of Columbia and Dulles Airport. The environmental impact statement on the Dulles Toll Road dealt extensively with the impacts of opening the corridor to increased traffic. Some of the traffic impacts will be brought on by this carpool regulation. There will be no significant increase in noise or air pollution from the amendment. There will be no impact on Wolf Trap Farm Park or other park lands.

The assessment is available for review and comment at the public docket at 800 Independence Avenue, S.W.,—Room 916, at the Dulles Airport Manager's Office; and at Washington National Airport, Office of the Director, (Hangar 9). A copy may be obtained by writing to:

Mr. Henry L. Mahns, Engineering Division, West Lab Building, AMA–32, Washington National Airport, Washington, D.C. 20001

Effective Date

The FAA has found that good cause exists to have this amendment become effective in less than 30 days after its publication. The amendment relieves restrictions on the Dulles Highway that would otherwise remain in effect. Further, the Dulles Access Highway extension is scheduled to open in less than 30 days after publication of this amendment. At that time this amendment prescribing the manner

open for traffic, whichever occurs first. The FAA will publish the termination date.

(Secs. 3 and 4 of the Second Washington Airport Act, 64 Stat. 770; Sec. 313 of the Federal Aviation Act of 1958, as amended 49 U.S.C. 1354(a); (49 U.S.C. 106(g), (Revised Pub. L. 97–449, January 12, 1983).

NOTE: It is certified under the criteria of the Regulatory Flexibility Act that this regulation will not have a significant economic impact on a substantial number of small entities. Only a few small entities are affected and the cost of implementation and compliance is deemed minimal. Based on the above, the FAA has also determined that the regulation is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). A detailed economic evaluation is not required because the economic impact of the regulation is judged to be minimal.

Amendment 159–29

Metropolitan Washington Airports

Adopted: November 29, 1986 **Effective: December 3, 1986**

(Published in 51 FR 43585, December 3, 1986)

SUMMARY: This action increases the maximum permissible length of nonstop flights to or from Washington National Airport from 1,000 miles to 1,250 miles. The amendment also eliminates the procedures for reducing the number of air carrier slots at National Airport when the annual number of passengers at the airport reaches a certain level. Effective on the date of transfer of National Airport and Washington Dulles International Airport to the Metropolitan Washington Airports Authority, the amendment removes the prohibition on the operations of certain types of air carrier aircraft at National Airport and removes the provisions for enforcement of the airport regulations by the FAA. The limit for scheduled air carrier operations at National Airport remains at 37 per hour. All of the above actions are taken in consideration of provisions of the Metropolitan Washington Airports Act of 1986, enacted on October 18, 1986.

EFFECTIVE DATE: The removal of 14 CFR § 93.124 and the addition of 14 CFR Part 93, Subpart T are effective on December 3, 1986. The revision of 14 CFR § 159.59 and the removal of § 159.191 are effective on March 1, 1987.

FOR FURTHER INFORMATION CONTACT: David L. Bennett, Office of the Chief Counsel, AGC–230, Federal Aviation Administration, 800 Independence Avenue, S.W., Washington, D.C. 20591, Telephone; (202) 267–3491, or Edward S. Faggen, Legal Counsel, AMA–7, Metropolitan Washington Airports, Federal Aviation Administration, Hangar 9, Washington National Airport, Washington, D.C. 20001, Telephone: (703) 557–8123.

SUPPLEMENTARY INFORMATION:

implementing regulations (46 FR 58036) to guide the future operation and development of Washington National and Washington Dulles International Airports. The implementing regulations made a number of changes in the operational rules at National Airport, including the establishment of a 1,000-mile perimeter for nonstop operations to or from the airport (14 CFR § 159.60).

A second change was the adoption of an annual passenger ceiling or "cap" at National Airport (14 CFR § 93.124). The rule provided that each January the FAA would make a projection of the number of passengers to be enplaned and deplaned at National between the following April and April of the next year. When the projection showed more than 16 million passengers, the FAA would transfer one slot or more per hour, as required, from air carriers to commuter operators.

On October 18, 1986, the "Metropolitan Washington Airports Act of 1986" was effective. The Act provides for a long-term lease and transfer of the operation of National and Dulles Airports from the Federal government to a regional authority, the Metropolitan Washington Airports Authority. In addition to the lease provisions, the Act contains several specific provisions relating to the operation of National Airport. Several of these provisions warrant immediate regulatory action on the part of the FAA.

First, § 6005(c)(5) of the Act provides for the continuation of certain Washington National and Washington Dulles International Airport regulations (14 CFR Part 159) after the airports are transferred to the Authority. However, subparagraph 6005(c)(5)(B) provides as follows:

(b) EXCEPTIONS.—The following regulations shall cease to be in effect on the date the lease takes effect:

(i) section 159.59(a) of title 14 Code of Federal Regulations (relating to new-technology aircraft); and

(ii) section 159.191 of title 14, Code of Federal Aviation Regulations (relating to violations of Federal Aviation Administration regulations as Federal misdemeanors).

Paragraph 159.59(a) of the Federal Aviation Regulations (FAR) prohibits operation at National Airport of an air carrier aircraft of a type not regularly operated at the airport as of July 1, 1981, unless approved by the Administrator for safety considerations and by the Director, MWA, for considerations of groundside capacity. Removal of this provision will leave the Authority in the same position as other non-Federal airport operators with respect to control of the types of aircraft which serve the airports.

FAR § 159.191 provides for Federal criminal penalties for violation of airport regulations and for removal of a violator from the airport at the order of the airport manager. Upon the lease of the airports to the Authority, the provisions of Part 159 will become the regulations of the Authority rather than the FAA. Therefore, it would be inappropriate to retain provisions for FAA enforcement of the airport regulations. Accordingly, Congress has provided for the repeal of the enforcement provisions effective on the date of the lease.

Because the Act provides that FAR §§ 159.59(a) and 159.191 will cease to be in effect on the date of the lease, the FAA is removing both sections effective on that date. Both sections must remain in effect until the transfer, however, to ensure that FAA retains jurisdiction to operate and administer the airports until the Authority is able to do so. The date planned for the lease to take effect is March 1, 1987, and that date is designated for the effective date for removal of the two sections. The revised effective date will be published in advance in the *Federal Register*.

In addition to removing § 159.59(a), this amendment revises the remaining sections of § 159.59 to redesignate paragraphs (b) through (d) as (a) through (c) respectively, and to eliminate certain errors in publication of § 159.59 contained in the *Code of Federal Regulations*. As revised, 14 CFR § 159.59 will be identical to the provisions contained in § 159.59 of the Federal Aviation Regulations.

A second provision of the Act which affects National and Dulles Airport regulations, § 6009(e)(2), reads as follows:

the agency.

Finally, § 6012 of the Act provides as follows:

> PERIMETER RULE.—An air carrier may not operate an aircraft nonstop in air transportation between Washington National Airport and another airport that is more than 1,250 miles away from Washington National Airport.

Section 6012 prohibits nonstop flights longer than 1,250 miles. It is clear from this language that it was the sense of Congress to replace the current 1,000 mile perimeter rule with a 1,250-mile rule. Accordingly, the FAA is increasing the limit on nonstop flights at National Airport to a 1,250-mile perimeter at this time. This change will permit nonstop service to several cities which are beyond the current 1,000 mile perimeter. The availability of nonstop operations to additional points may result in the adjustment of schedules at National Airport by some carriers. However, the increase or reduction of flights in any particular market is not required by the amendment, and any such change in service patterns is exclusively a carrier marketing decision.

As noted above in this preamble, the Metropolitan Washington Airports Act of 1986 provides that, with a few exceptions, the airport operating rules in Part 159 of the Federal Aviation Regulations (FAR) will become regulations of the Authority upon the effective date of the lease. Because the perimeter rule established in § 6012 of the Act will continue to affect operations after the transfer to the Authority, the FAA believes that it is appropriate to incorporate the perimeter rule in FAR Part 93, Special Air Traffic Rules and Airport Traffic Patterns. FAR Part 93 will not be affected by the transfer of the airports.

Effective Date

The amendments adopted herein affecting FAR Part 93 and § 159.60 become effective upon publication in the *Federal Register* (December 3, 1986). The revision of FAR § 159.59 and the removal of § 159.191 take effect on March 1, 1987, to coincide with the effective date of the lease of National and Dulles Airports to the Metropolitan Washington Airports Authority. If the effective date of the lease is revised subsequent to issuance of this amendment, the effective date for revision of § 159.59 and removal of § 159.191 will be revised accordingly. The agency believes that circumstances warrant the adoption of the amendments without a period for public comment. With respect to the deletion of § 93.124 from FAR Part 93, the provisions of that section have already been eliminated by an act of Congress effective October 18, 1986. Similarly, the Act provides that §§ 159.59(a) and 159.191 will cease to be in effect on the date of the lease to the Authority. The removal of these sections, therefore, has no effect other than to make FAA regulations consistent with the controlling statute.

The amendment to the perimeter rule, extending the maximum nonstop flight length to 1,250 miles, is also consistent with congressional intent as expressed in § 6012 of the Metropolitan Washington Airports Act of 1986. The amendment relaxes the restrictiveness of an existing regulation and does not impose new restrictions on any operator.

Also, while this action was not preceded by a specific notice of proposed rulemaking, the amendment to the perimeter rule was not adopted without the benefit of public comment on the nonstop perimeter issue. The issue was specifically addressed in the rulemaking conducted in connection with the development of the Metropolitan Washington Airports Policy, and comments on the National Airport perimeter were requested in prior agency notices of proposed rulemaking. The issues involved have not significantly changed from the time of that rulemaking action. As a result, the FAA was apprised of the potential impacts of this amendment and the views of affected segments of the public and the aviation industry prior to adopting the amendment.

In consideration of the above, I find that notice and comment on the amendments adopted are either unnecessary or impracticable and contrary to the public interest. I further find with respect to the removal of FAR § 93.124 and the amendment to the perimeter rule, that because these amendments

change in the regulation itself, which was permitted if not directed by § 6012 of the Act, has no economic impact. It is likely that a few carriers will elect to avail themselves of the new 1,250-mile perimeter by inaugurating nonstop service to cities not previously eligibile for such service. Typically, these carriers now serve those cities, but make a stop at an intermediate airport such as Dulles international. In the event a carrier begins nonstop service, it may receive some financial benefit from the ability to adjust its schedule. In addition, cities affected by the decisions of carriers to adjust their schedules at National Airport may experience an increase or decrease in the quality or quantity of air service to Washington, D.C. However, these impacts are speculative and do not inevitably result from the amendment. Rather, they result from future marketing decisions of air carriers serving National Airport. Only a relatively few carriers would be in the position to initiate nonstop service to cities between 1,000 miles and 1,250 miles from National Airport.

Because the impacts, if any, of the amendments adopted are speculative and not directly attributable to the regulation itself, I find that the economic impact of the amendments are minimal and, therefore, that further regulatory evaluation is not required. For the same reasons, I find that none of the amendments (1) is a "major rule" under Executive Order 12291, or (2) is a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11074; February 26, 1979).

Adoption of the Amendment

For the reasons set out above, Parts 93 and 159 of the Federal Aviation Regulations (14 CFR Part 93 and Part 159) are amended effective December 3, 1986.

The authority citation for Part 159 is revised to read as follows:

Authority: The Metropolitan Washington Airports Act of 1986; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

Amendment 159–30

Carriage of Weapons and Other Dangerous Objects at Washington National Airport and Washington Dulles International Airport; Restricted Areas

Adopted: May 29, 1987 **Effective: June 5, 1987**

(Published in 52 FR 21502, June 8, 1987)

SUMMARY: This final rule clarifies the rule governing the carriage of weapons and other dangerous objects on Washington National Airport and Washington Dulles International Airport. It also clarifies the rule governing restricted areas on the Airports. The revisions are intended to make the rules more closely conform to Federal Aviation Regulations governing aviation security. They are necessary to preserve airport security, as well as to make it easier for the traveling public to comply with the airports' rules without compromising airport security.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen or Jana M. Phillips Legal Counsel, AMA–7, Hangar 9, Washington National Airport, Washington, D.C. 20001, Telephone: (703) 685–8115.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1986, FAA requested comments on a proposal to change the regulation governing the carriage of weapons at the metropolitan Washington Airports (Notice 86–18, 51 FR 41290; November

Government to a regional authority, the Metropolitan Washington Airports Authority. The Act provides that the regulations of the FAA shall become the regulations of the new Airports Authority when the transfer is effective. The Authority may amend these rules and adopt new ones. The FAA has concluded that the existing airport rule on the carriage of weapons should not be continued for the reasons stated herein and that it is, therefore, appropriate to complete the instant rulemaking despite the impending transfer of the airports. The final rule as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

The existing FAA regulation for National and Dulles Airports, 14 CFR § 159.79(a), prohibits any person, except a Peace Officer, and authorized post office, Airport, or air carrier employee, or a member of an Armed Force on official duty, from carrying any weapon, explosive or inflammable material on or about his person, openly or concealed, on the airports without the written permission of the airport manager. This regulation was designed to assist airport law enforcement and security efforts by maintaining tight control over the presence of weapons and other dangerous objects on the airports.

The existing regulation has created confusion among persons who are carrying weapons on the airport for the lawful purpose of checking these weapons with their baggage. The Federal Aviation Regulations (FAR's) in 14 CFR Parts 107 and 108, which are generally applicable to all air carrier airports, forbid the carriage of weapons on or about an individual's person or accessible property when that person enters the sterile area of an airport (§ 107.21), the area behind the security screen point. The regulations, however, do allow air carriers to develop their own rules permitting passengers to ship unloaded weapons aboard the aircraft. Among other requirements, the weapons must be carried in a container deemed by the carrier to be appropriate for air transportation and the weapons must be placed in an area of the aircraft that is inaccessible to passengers (§ 108.11(d)). Many passengers, although aware of these generally applicable security regulations, are unaware that under the particular regulation at National and Dulles Airports they may be prosecuted if they fail to have the airport manager's permission to carry weapons onto the airport, even weapons securely packed in baggage, for the purpose of checking them in an inaccessible part of the aircraft. The FAA, therefore, has determined that the existing airport regulation needs to be clarified.

This amendment will permit persons to bring weapons onto these airports without prior permission of the manager, but only if the weapons are unloaded or deactivated to the extent possible, and are packed in a secure container for shipment. Persons carrying weapons properly prepared for air transportation do not pose a threat to the security of the airport because their weapons are unloaded and carried in containers which are suitable for airports, but will not unduly interfere with the legitimate shipment of weapons or law enforcement. Further, once a person, other than law enforcement officers and certain other persons specifically authorized under the final rule, reaches a security screening point or enters a sterile area, however, there in no legitimate reason to carry a weapon. Therefore, with limited exceptions, all persons will be prohibited by the airports' regulation as well as generally applicable Federal Aviation Regulations from carrying even unloaded, securely packaged weapons when an inspection has begun before entering a sterile area or while in a sterile area of the airport. The adopted regulation applies to both unconcealed and concealed weapons.

Comments

Four comments were received from the Airline Pilots Association (ALPA), the National Rifle Association (NRA), the Department of the Army and Air Atlanta. ALPA and the NRA generally supported the proposed rule while the Department of the Army and Air Atlanta limited their comments to specific portions of the proposal.

Paragraph (a)(1) of the Proposed Rule

One commenter suggested that the word ''about'' in paragraph (a)(1) of the proposed rule be defined to mean ''readily accessible for immediate use.'' The FAA believes that this portion of the rule is sufficiently clear as written and that adding such a definition could create confusion concerning the

A comment concerning subparagraph (a)(1)(i) suggested that the word "deactivated" creates confusion because some of the weapons listed, such as a black jack and metal knuckles, cannot be deactivated. This paragraph is sufficiently clear as written because it states that if the weapon is not a firearm, it must be deactivated "to the extent possible." The rule clearly does not require deactivation where it is not possible to do so.

Another comment suggested that the term "pellet pistol or rifle" be inserted after the word "firearm" in subparagraph (a)(1)(i). This is appropriate because pellet pistols or rifles, while not technically firearms, are capable of being loaded and unloaded. This suggestion has been incorporated into the final rule.

Paragraphs (a)(2) and (a)(3)

One commenter suggested that the terms "explosive" and "incendiary" are too vague and that the phrase "bomb or similar explosive or incendiary device" be used instead. The FAA agrees that the phrase "incendiary" is too broad for airport-wide application as has included the suggested phrase in the final rule.

Paragraph (c)

The comments received on the definition of the term "weapon" used in the proposed rule objected to the use of the word "knife" as being too broad, because it could apply to dinner knives and small pocket knives. The comments point out that most state laws define weapons as including switchblade knives, daggers, razors, stiletos, or knives with blades longer than three inches. The FAA has modified the final rule for airport purposes to enumerate the types of knives prohibited by the regulation.

The comments also suggested deleting pellet guns and bows and arrows from the rule because these articles may be innocently carried by young travelers or other persons on the airports. The FAA concludes that it is necessary to include these within the scope of the rule because these articles are dangerous weapons that may inflict serious bodily harm, even if carried by "innocent" persons. The rule does not apply to toy guns and other toys that resemble weapons.

One commenter also suggested that the phrase "includes, but is not limited to" be replaced with "or any weapon of like kind." The FAA agrees that the suggested phrase is clearer and gives better notice of what may be prohibited under the rule.

One commenter suggested that a "sling shot" is not a weapon and that the correct term for the weapon is "slung shot." However, sling shots can inflict serious bodily harm. Therefore, they are considered dangerous weapons under this rule. A "slung shot" appears to be a different type of dangerous weapon. In order to be as comprehensive as possible, the FAA has included both types of weapons in the final rule.

Paragraph (d)

The Department of the Army has requested that the rule specifically state that members of the Armed Forces on official duty may carry weapons on the airports. It acknowledges that the rule's reference to 14 CFR § 108.11 permits an "official or employee of the United States . . . to carry weapons on the airport if the person is authorized by his or her agency to have the weapon," but says that laymen would not consider military personnel to be employees of the United States. The FAA disagrees. Airport police officers are aware that military personnel are employees or officials of the United States and will be advised that such personnel may carry weapons on the airports if authorized to do so by the agency employing them and if they possess authorizing credentials bearing a full face picture of themselves, their signature, and the signature of the authorizing official or the official seal of the authorizing organization. A badge, shield or similar device will not be acceptable as the sole means of identification.

Another comment concerning this paragraph criticizes the regulation for eliminating authorized air carrier employees and Post Office employees from carrying any kind of personal protection equipment when apprehending thieves, drunks or addicts on the airport property. The FAA notes that the final

gas or compressed and latched spring. This has been incorporated into the amendment in order to make this paragraph consistent with the modifications made to subparagraph (a)(1)(i).

Clarification of "Restricted Area"

Existing 14 CFR § 159.89(a) prohibits persons from entering any restricted area on the airport that is posted as closed to the public unless otherwise authorized by the airport manager. The term "restricted area" is not defined in Part 159. "Restricted area" in the Federal Aviation Regulations generally refers to airspace restrictions. See 14 CFR § 1.1. The FAA therefore finds it necessary to state the definition of the term "restricted area" that is applicable to § 159.89. This amendment is consistent with the FAA's longstanding practice on the airports and it is not considered to be a substantive addition to the rule. This amendment clarifies 14 CFR § 159.89, and, therefore, notice and public procedure on this amendment are unnecessary.

Publication for prior comment would not reasonably be expected to result in the receipt of useful information on this minor change.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on persons carrying dangerous objects on the airports and will not require any significant changes in the airports' security enforcement procedures or restricted area procedures. A minimal economic benefit would accrue to those who previously would have sought written permission to legitimately carry weapons on the airports. The rule is not expected to affect most passengers and other persons on the airports who do not have a reason to bring a weapon onto the airport. For this reason, it has been determined that the expected economic impact of this amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to endure, among other things, that small entities are not disproportionately affected by government regulations. The final rule will have only a minimal cost impact on affected persons. Therefore, the FAA has determined that, under the criteria of the RFA, the final rule will not have a significant economic impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional requirements on persons complying with the rule and will not impose any major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this amendment is so minimal it does not warrant a full regulatory evaluation.

Reason for Immediate Adoption

The Administrative Procedure Act allows a rule to be made effective immediately for good cause. The Metropolitan Washington Airports Act of 1986 requires the Authority to adopt the Airports' regulations upon the date of transfer of the Airports to the Authority (June 7, 1987). Because these modifications to the existing Airports' weapons regulation are necessary to eliminate confusion and enhance the enforceability of the regulation, and because this regulation must be made effective prior to June 7, 1987,

Amendment 159–31

Changes for Use of Metropolitan Washington Airports

Adopted: June 4, 1987 **Effective: June 5, 1987**

(Published in 52 FR 21908, June 9, 1987)

SUMMARY: This final rule adjusts the fees and charges for use of the Washington National Airport and Washington Dulles International Airports for general aviation operators and for air carriers that do not have a contract for use of the Airports. General aviation users will pay landing fees at the same rate as the contract air carriers. The exemption from landing fees at Dulles for aircraft under 3,500 pounds will be eliminated and a minimum landing fee of $4.00 imposed. Non-contract air carriers will pay service charges and a differential landing fee of 125 percent of the contract carrier fee.

FOR FURTHER INFORMATION CONTACT: Edward S. Faggen, Legal Counsel, AMA–7, Hangar 9, Metropolitan Washington National Airports, Washington, D.C. 20001, Telephone: (703) 685–8115.

SUPPLEMENTARY INFORMATION:

Background

On March 11, 1987, interested persons were invited to comment on a proposal to change the regulation which prescribes landing fees at Washington National and Washington Dulles International Airports, (Notice 87–1, 52 FR 7446; March 11, 1987). All persons were given an opportunity to participate in the rulemaking by submitting such written data, views or arguments as they desired. Comments have been received and consideration has been given to all of the communications received by FAA on Notice 87–1.

Washington National Airport and Washington Dulles International Airport (the "Airports") are owned and presently operated by the Federal Government. The Secretary of Transportation has control over and responsibility for the care, operation, maintenance, and protection of the Airports, and has the authority to issue rules and regulations necessary for these purposes. This responsibility has been delegated to the Administrator of the Federal Aviation Administration (FAA).

As proprietor of the Airports, FAA establishes the terms and conditions for commercial activities occurring at the Airports. The FAA collects fees and charges from aircraft operators to recover the costs associated with the airfields. It is common for the scheduled carriers to have contracts with FAA which prescribe the formula for calculating their landing fees. Users, including general aviation, who do not have a contractually prescribed landing fee pay the fees prescribed by the regulations in Section 159.181 (14 CFR § 159.181).

On October 18, 1986, the "Metropolitan Washington Airports Act of 1986" ('the Act') became effective. The Act authorized a long-term lease of the Airports from the Federal Government to a regional authority, the Metropolitan Washington Airports Authority. The Act contains a provision relating to the landing fees of general aviation aircraft which warrants immediate regulatory action on the part of the FAA. Section 6005(c)(10) of the Act provides:

> "The Airports Authority shall compute the fees and charges for landing general aviation aircraft at the Metropolitan Washington Airports on the same basis as the landing fees for air carrier aircraft except that the Airports Authority may require a minimum landing fee not in excess of the minimum landing fee for aircraft weighing 12,500 pounds."

In the current FAA contracts with the air carriers, which expire in December 1989, the carriers have agreed to pay a landing fee for each 1,000 pounds of the maximum authorized landing weight

fee at the Airports is $.5695 per 1,000 pounds of landing weight.

The landing fees for general aviation were last adjusted in 1968. The current fees at National Airport are only $0.12 per 1,000 pounds for turbo-propeller and reciprocating engine aircraft and $0.30 per 1,000 pounds for turbo-jet aircraft. There is a $4.00 minimum fee at National Airport for all aircraft, excluding helicopter. At Dulles Airport, the basic landing fee is $0.25 per 1,000 pounds for turbo-jet and reciprocating engine aircraft. There is a $0.75 minimum fee, but there is no fee for noncommercial aircraft weighing less than 3,500 pounds, which accounts for approximately 25 percent of the general aviation aircraft landing at Dulles.

The Act provides that the FAA's regulations will become regulations of the new Airport Authority. Thereafter, the Authority may amend these rules and adopt new ones in accordance with its procedures. The FAA has concluded that its regulation of landing fees must be adjusted to conform to the Act's requirements so that on the effective date of the transfer, general aviation will pay for landing at the Airports on the same basis, i.e., cost per thousand pounds, and at the same rate as the air carrier users pay. This final rule will accomplish this. It will also impose a $4.00 minimum landing fee on general aviation users at Dulles Airport. The minimum fees at both airports will be applicable to helicopters. This as adopted by FAA will transfer to the new Authority when its lease becomes effective on or about June 7, 1987.

FAA also proposed to modify the landing fee for those carriers that do not have contracts for regular use of the airports. The signatory carriers (defined herein as carriers operating under Parts 121, 127, 129, or providing scheduled or non-scheduled operations under Part 135 that have signed contracts with the Airports) have agreed to pay fees to defray the costs of the Airports' operation. At both Airports signatory carriers pay security fees for pre-boarding security. At Dulles, the carriers also pay fees for the use of the Federal Inspection Service area where United States Customs Service inspections are performed. Also at Dulles, the carriers pay a common use facility fee to pay for the cost of providing the large common hold rooms, baggage claim areas and other baggage handling and skycap facilities. A portion of the cost of mobile lounges to transport passengers between the main terminal and the remote terminals or aircraft is also recovered through the common use facility fee. Currently, the signatory carriers each pay a fixed fee of $3,395.00 a month plus a fee per passenger.

In addition to the fees, the signatory carriers pay rent for the space that they lease for their exclusive use. They have agreed to be responsible for considerable maintenance of Government premises on the Airports including portions of the airfield, the terminals, and the hangars at National Airport. In addition to prescribing significant financial and maintenance responsibilities for the carriers, the contracts advance airport policies regarding the accommodation of new entrant carriers. The signatory carriers who lease space on the Airports have agreed to a process that may require them to accommodate other carriers, including new entrant carriers, in their leased space, if the Director of the Airports determines that it is necessary.

Non-signatory carriers and other irregular users use the same facilities as signatory carriers at the Airports. The non-signatory carriers pay fees to the Airports in accordance with the regulation as opposed to a contract. The existing regulation provides for a landing fee for non-signatory carriers of $0.25 per 1,000 pounds at Dulles and $0.30 per 1,000 pounds at National. These fees are substantially below that which the signatory carriers are obligated to pay according to their contracts.

FAA proposed to change its regulation of fees to bring the fees for non-signatory carriers into line with the other fees charged to users who contract to support the Airports. The final rule will require non-signatory carriers to pay 125 percent of the signatory carrier landing fee. The differential would be in lieu of facility charges which are impractical to impose on irregular users. It also recognizes the additional administrative costs associated with non-signatory carriers who operate at the Airports.

Also, the fees may vary with the amount of noise made by an aircraft. In theory, such pricing would have salutary effects of moving some aircraft operations from high cost to low cost operating times, that is, from peak to off-peak periods of congestion or periods of lower noise sensitivity.

In response, FAA will neither embrace nor reject the efficient pricing theory espoused by the FTC staff. The imposition of landing fees at the Airports based on such a theory is beyond the scope of the present rulemaking. The present rule is intended for the limited purpose of conforming the Airports' existing landing fees with the requirements of the Act. The Act requires that general aviation landing fees be paid at the same rate as air carrier landing fees.

Further, air carrier landing fees at the Airports are fixed by contracts which do not expire until the end of 1989. Therefore, FAA does not have the ability to pursue economic pricing theories such as the one proposed by the FTC staff for either the contract carriers or general aviation. The merits of this comment are more appropriately addressed by the Authority when the air carrier agreements are renegotiated.

The Air Transport Association (ATA) expressed its support for the overall objective of the proposed rule and urged the FAA to adjust the non-signatory, itinerant and general aviation user fees as proposed. ATA views this rule as a "step toward the desirable objective of cost-relatedness of fees and charges, and the recovery by the airport of a 'fair share' of costs from the variety of airport users." ATA did urge the Metropolitan Washington Airports Authority to examine the minimum landing fee of $4 and suggested that the minimum may not be adequate to recover the cost of services and facilities provided.

Under the Metropolitan Washington Airports Act, the minimum landing fee on general aviation aircraft cannot exceed the fee that would be imposed on a 12,500 pound aircraft. While this fee would be in excess of $4 (approximately $6) FAA has elected not to set the minimum fee at the maximum permitted by law. The change to a weight-base method to calculate fees produces a fee increase for general aviation users. Furthermore, the imposition of a $4 minimum at Dulles Airport will also be an increase for some of the smaller aircraft operating at that airport. As stated in the Notice, a future change by the Authority in the minimum landing fee to the level permitted by law may be appropriate if it is determined by the Authority that the cost of providing basic services at National and Dulles to light aircraft is not being recovered by the weight-based landing fee and by the current minimums.

A comment was received from Aeroflot, the Soviet Airline. Aeroflot is a non-signatory carrier at Dulles Airport. Aeroflot did not object to the proposed rule, but noted that Aeroflot would benefit from keeping its non-signatory status. FAA views Aeroflot's comments as supporting the proposed rule. The determination of whether Aeroflot's status is properly that of a signatory carrier or non-signatory carrier is not a regulatory matter. This will be determined by discussions between the carrier and airport management.

The Federal Republic of Germany's Armed Forces Administrative Agency, which operates aircraft on official missions of the German Air Force expressed concern that the proposed rule would impose a landing fee on German Air Force aircraft landing at Dulles. This is not the situation. The rule will not impose landing fees on public aircraft. Public aircraft are defined by FAA as "aircraft used only in the service of a government, or a political subdivision. It does not include any government-owned aircraft engaged in carrying persons or property for commercial purposes." 14 CFR § 1.1. This definition is added to the landing fee rule for continuity after the transfer to the Authority. German Air Force aircraft have been treated as public aircraft in the past and have not paid a landing fee at the Airports. They will continue to be treated as public aircraft under the new regulation.

U.S. Jet, Inc., a provider of on-demand Part 135 service at National Airport objected to the distinction proposed in the Notice between scheduled and non-scheduled Part 135 operators. U.S. Jet is seeking to become a signatory carrier at the Airports. As originally proposed, only scheduled Part 135 operators could become signatory air carriers; non-scheduled Part 135 operations would remain general aviation

carrier. U.S. Jet's premise is not correct. The definition of a non-signatory carrier, which was in the Notice and is retained in the final rule does not encompass non-scheduled Part 135 operators. They will continue to be treated as general aviation if they do not reach an agreement with the Airport to be signatory carriers. The non-signatory carrier fee differential is aimed at operators of large aircraft and Part 135 operators that are scheduled. Regularly scheduled operators are encouraged to become signatory carriers at the Airport. Non-scheduled Part 135 operators tend to operate smaller aircraft and function more like general aviation. It would be appropriate for the Authority to reconsider this classification, particularly if non-scheduled Part 135 operators impose costs on the Airports that are not adequately recovered by the general aviation landing fee.

Finally, it was suggested that the landing fees, once calculated, be rounded to the nearest $0.25. FAA has elected not to adopt this suggestion.

It should be noted that FAA terminology is used in the rule. For instance, the rule refers to the Director of the Metropolitan Washington Airports, an FAA title. After the transfer of the Airports, the Airports Authority, of course, may use different terminology and titles.

Regulatory Evaluation

The final rule is not expected to have any significant impact because it will not impose any significant additional requirements on the users of the airports. A minimal economic impact will befall operation of general aviation aircraft at the airports and there will be a relatively minimal impact on non-signatory carriers who use the airports. A minimal economic benefit will accrue to the signatory carriers because the increased fees from general aviation and the non-signatory carriers will pay a larger percentage of the costs in the landing fee cost center thereby reducing the total costs to be paid by the signatory carriers. The rule is not expected to have any effect on passengers. For this reason, it has been determined that the expected economic impact of the amendment is so minimal that a full Regulatory Evaluation is not warranted.

The various regulations in the final rule will have no impact on trade opportunities for both U.S. firms doing business overseas and foreign firms doing business in the U.S.

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress in order to insure, among other things, that small entities are not disproportionately affected by Government regulations. Small entities affected by the final rule are likely to be itinerant non-scheduled Part 135 air taxis who use the Airports from time to time, non-scheduled air taxi operators who are based at the Airports and non-scheduled operators of large aircraft. The rule will not require any change in the operations of these companies as currently conducted. No additional record-keeping requirements would be imposed. The air taxi operators are considered general aviation for landing fee purposes. The increase may have a significant impact on one or more of the air taxis that are based at the Airports, but it will not have a significant impact on a substantial number of small entities which operate aircraft, including large aircraft. The impact on the affected small entities would be substantially less than the threshold for significant impact under agency guidelines. Therefore, under the criteria of the Regulatory Flexibility Act, the final rule will not have a significant impact on a substantial number of small entities.

Conclusions

The final rule is not expected to impose any significant economic impact because it will not impose significant additional costs requirements on persons complying with the rule nor will it impose major changes in the activities it addresses. Therefore, the FAA has determined that this proposed amendment involves a regulation which is not major under Executive Order 12291 or significant under DOT Regulatory Policies and Procedures. (44 FR 1034; February 26, 1979). For the same reasons, it is certified that this amendment will not have a significant economic impact, positive or negative, on a substantial number of small entities. Because the cost of this amendment is so minimal it does not warrant a full regulatory evaluation.

June 5, 1987.

The authority citation for Part 159 is revised to read as follows:

Authority: 49 U.S.C. § 2402 and 2424; The Metropolitan Washington Airports Act of 1986, P.L. 99–591, October 30, 1986.

this part referred to as "the Airport"):

(1) Washington National Airport as described in section 1301 of Title 7 of the District of Columbia Code, 1961 Edition, and including buildings and facilities of that airport.

(2) Dulles International Airport, consisting of the land and access road, located in Fairfax and Loudoun counties, Virginia, acquired in Civil Actions Nos. 1638M and 1902M, U.S. District Court for the Eastern District of Virginia, Alexandria Division, and including buildings and facilities on that airport.

(b) The Director of the Bureau of National Capital Airports and with respect to each Airport, the Airport's Manager may issue such orders and instructions as are necessary for administering this part. The Manager of each Airport described in paragraph (a) of this section may post signs at the Airport to which he is assigned which state or apply outstanding rules, regulations, orders or instructions. Each person on the Airport shall comply with these orders, instructions, and signs.

(Amdt. 159–1, Eff. 2/4/63); (Amdt. 159–3, Eff. 8/27/63); (Amdt. 159–11, Eff. 1/10/69)

§ 159.2 Motor vehicles carrying passengers for hire on Washington National Airport.

(a) No person may operate a taxicab or other motor vehicle on Washington National Airport for the purpose of picking up a passenger for hire unless he operates in accordance with one of the following conditions:

(1) He has a contract with the United States authorizing him to pick up passengers for hire on that airport.

(3) He operates a taxicab, in other than a taxicab pickup zone, to carry immediately from that airport a passenger picked up, without a prior request, at the point of and immediately upon discharge of another passenger delivered there.

(4) He operates a taxicab on that airport to pick up a person or persons within an area designated as a taxicab pickup zone and pays a $.50 fee for each such pickup (individual or group). However, the airport manager may designate hours of operation during which a fee need not be paid.

(b) No person may operate a taxicab or other motor vehicle on Washington National Airport for the purpose of picking up or discharging a passenger for hire unless he complies with each of the following requirements:

(1) He may not solicit passengers.

(2) He may not carry in his vehicle a nonpaying passenger other than a trainee driver.

(3) He must obey all posted official airport signs and all lawful directions and signals of airport police.

(c) No person may operate a taxicab on Washington National Airport for the purpose of picking up a passenger for hire unless he complies with each of the following requirements:

(1) He must remain in his vehicle while waiting to enter a taxicab pickup zone or while in a taxicab pickup zone, except when assisting a passenger to enter the vehicle or when loading a passenger's baggage.

(2) He must accept as passengers those persons and only those persons assigned by the taxicab dispatcher, if the taxicab dispatcher is on duty at that pickup zone at the time the pickup is made.

(v) Montgomery County;

(vi) Prince George's County;

(vii) The District of Columbia.

(5) He must have in his possession the licenses required by paragraph (c)(4) of this section.

(6) Upon the request of an airport police officer, he must surrender for inspection to that officer the licenses required by paragraph (c)(4) of this section.

(7) He must display in his taxicab, in a place conspicuous to passengers, his taxicab operator's license and a schedule of the rates issued by the Washington Metropolitan Area Transit Commission or the jurisdiction that has licensed his taxicab, as appropriate under paragraph (c)(9) of this section.

(8) He must permit airport police to inspect his taxicab to determine if he is displaying the license and rate schedule required by paragraph (c)(7) of this section.

(9) He must charge no more than the passenger fares prescribed by the Washington Metropolitan Area Transit Commission for interstate transportation, if his taxicab does not have a meter, or those prescribed by the jurisdiction that has licensed his taxicab, if his taxicab has a meter, when transporting a passenger from a point on Washington National Airport to:

(i) Another point on that airport;

(ii) A point on Dulles International Airport;

(iii) A point within the City of Alexandria or the City of Falls Church;

(iv) A point within the District of Columbia; or

(v) Any point within the outer geographical boundaries of Arlington County, Fairfax County, Montgomery County, or Prince George's County.

(d) As used in this section:

(1) The word "taxicab" means any motor vehicle that has a seating capacity of not more than eight passengers in addition to the operator, is being operated for the purpose of transporting passengers for hire between points along the public streets as the passengers may direct, and is

(Amdt. 159–13, Eff. 1/15/71); (Amdt. 159–14, Eff. 1/1/74); (Amdt. 159–16, Eff. 1/19/78)

§ 159.4 Motor vehicles carrying passengers for hire on Dulles International Airport.

(a) No person may operate a taxicab or other motor vehicle on Dulles International Airport for the purpose of picking up a passenger for hire unless he operates in accordance with one of the following conditions:

(1) He has a contract with the United States authorizing him to pick up passengers for hire on that airport.

(2) He operates a taxicab to carry immediately from that airport a passenger picked up in response to a prior request, and his manifest shows the time the request was made, the name of the person to be picked up, and the time and the point of the pickup.

(3) He operates a taxicab to carry immediately from that airport a passenger picked up, without a prior request, at the point of and immediately upon discharge of another passenger delivered there.

(b) No person may operate a taxicab or other motor vehicle on Dulles International Airport for the purpose of picking up or discharging a passenger for hire unless he complies with each of the following requirements:

(1) He may not solicit passengers.

(2) He may not carry in his vehicle a nonpaying passenger other than a trainee driver.

(3) He must obey all posted official airport signs and all lawful directions and signals of airport police.

(4) He must permit airport police to inspect his vehicle to determine if he is displaying, in a place conspicuous to passengers, his name tag and rate schedule.

(c) No person may operate a taxicab on Dulles International Airport for the purpose of picking up a passenger for hire unless he complies with each of the following requirements:

vehicle that has a seating capacity of not more than eight passengers in addition to the operator, is being operated for the purpose of transporting passengers for hire between points along the public streets as the passengers may direct, and is

Each person who finds a lost article on the Airport shall deposit it at the office of the Airport police branch. If the article is not claimed by its owner within 90 days after it is deposited, it may be returned to the finder.

Chapter 4, Regulation of Traffic, of title 46.1, Motor Vehicles, of the Code of Virginia, 1950, as amended, that carry penalties greater than a fine of not more than $500 or imprisonment for not more than six months, or both, are hereby incorporated by reference as provisions of this part, to the extent that they apply by their terms to the circumstances at the airport and are not inconsistent with specific provisions of this part. The penalties provided by Virginia law for violations of these rules and prohibitions are not incorporated.

(Amdt. 159–1, Eff. 2/4/63); (Amdt. 159–4, Eff. 3/1/65)

§ 159.13 Special operating rules.

(a) No person may operate a motor vehicle on the landing area, ramp, or trucking concourse in the terminal building, unless—

(1) The vehicle has been inspected and approved by the Airport Manager or his agent; and

(2) That person holds a current operator's permit issued by the Airport Manager or is properly escorted by an Airport vehicle.

(b) The Airport Manager may issue a motor vehicle operator permit to any competent operator, that he considers necessary for the safe and efficient operation of the Airport. The Manager may in his discretion, revoke such a permit at any time.

(c) No person may operate a two-wheeled motor vehicle on the landing area, or ramp on the Airport.

(d) No person may ride a bicycle on the Airport without permission of the Airport Manager.

(Amdt. 159–11, Eff. 1/10/69)

Identification Card.

(Amdt. 159–3, Eff. 8/27/63); (Amdt. 159–11, Eff. 1/10/69)

§ 159.17 Speed.

(a) Unless otherwise authorized by the Airport Manager no person may operate a motor vehicle at a speed—

(1) Of more than six miles an hour in the baggage concourse in the terminal building;

(2) Of more than 15 miles an hour on any apron or ramp;

(3) Of more than 25 miles an hour on any taxiway, runway, restricted service road, or other aircraft movement area other than the apron or ramp; or

(4) Higher than the speed limit posted by the Airport Manager on any area of the Airport not covered by paragraphs (a) (1) through (3) of this section.

(b) No person may operate a motor vehicle on the Airport in a careless or reckless manner.

(c) Each person operating a motor vehicle on the Airport shall operate it so as to have it under proper control at all times, weather and traffic conditions considered.

(Amdt. 159–1, Eff. 2/4/63); (Amdt. 159–8, Eff. 7/22/66)

§ 159.19 Passenger's occupancy.

Except in a vehicle designed to carry passengers in such a manner, no person may, while on the Airport, ride on the running board of a moving motor vehicle, stand up in the body of a moving

audible or visual signal that it is on an emergency call, each person operating another vehicle on any road on the Airport shall immediately drive his vehicle parallel with, and as near as possible to, the right hand edge of the road, clear of all intersections, and stay there until the emergency vehicle has stopped or passed, unless otherwise directed by an Airport police officer.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.23 Parking.

(a) No person may park or stand a motor vehicle on the Airport except in an area specifically designated for parking or standing.

(b) No person may park a motor vehicle in any area on the Airport for a period longer than is prescribed for that area by the Airport Manager.

(c) No person may park a motor vehicle on the Airport, except in an attended parking area, for a period longer than 72 hours, without the specific approval of the Manager.

(d) No person may park a motor vehicle in a metered parking space on the Airport without depositing the required amount of money (for the time stated on the meter) in the parking meter controlling that space. If, during the time a motor vehicle is parked in a space controlled by a meter, the meter shows that there is a violation, the owner or operator of the vehicle is violating this paragraph unless he shows that the meter was not working properly.

(e) No person may park a motor vehicle on the Airport in an area requiring payment for parking unless he pays the required amount.

(f) No person may park a motor vehicle in a restricted or reserved area on the Airport unless he displays, in the manner prescribed by the Manager, a parking permit issued by the Manager for that area.

(g) No person may double park a motor vehicle on any road on the Airport. For the purposes of this paragraph, parking a vehicle at such a distance from the curb that another vehicle could park between it and the curb, is considered to be double parking.

in the ignition switch, the motor running, a key in the door lock, or an open door.

(k) No person may park or stand a motor vehicle at any place on the Airport in violation of any sign posted by the Manager.

(l) No person may park or stand a motor vehicle within 10 feet of a fire hydrant on the Airport.

§ 159.25 Accident reports.

Each operator of a motor vehicle involved in an accident between that vehicle and an aircraft, or in any other motor vehicle accident, on the Airport, that results in personal injury or in total property damages of more than $50, shall report it fully to the Airport police office as soon as possible after the accident. The report must include the name and address of the person reporting.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.27 Repair of motor vehicles.

(a) Except for persons authorized by the Airport Manager and except for minor repairs necessary to move the vehicle from the Airport, no person may clean or repair a motor vehicle on a road or in a parking area of the Airport.

(b) No person may, on the Airport, move or interfere or tamper with any motor vehicle, put its motor into motion, or take or use any part, instrument, or tool of it, unless he has the permission of the owner or presents satisfactory evidence to the Manager of his right to do so.

§ 159.29 Busses.

No person operating a motor bus for hire may load or unload passengers at the Airport at a place other than that designated by the Airport Manager.

§ 159.31 Moving of motor vehicles.

The Airport Manager or his agent may tow away or otherwise move any motor vehicle on the Airport that is parked in violation of the regulations of the Airport, if the Manager or his agent determines that it is a nuisance or hazard. The Manager may charge a reasonable amount for the moving service

found standing or parked on the Airport in violation of this section may be impounded by an Airport police officer and removed to the Airport police station or another area of the Airport designated for that purpose by the Airport Manager.

§ 159.35 Use of access highway to Dulles International Airport.

(a) Except in an emergency, and except as provided in paragraph (b) of this section, private vehicles may enter upon the Dulles Airport Access Highway only for the purpose of going to, or leaving, Dulles International Airport on airport related business, or, with the permission of the Airport Manager, to perform work on the Highway. Entry by any person upon the Dulles Airport Access Highway for a purpose not authorized by this section is a criminal offense. Violators are subject to a penalty under these regulations.

(b) *Exceptions.* Any person may enter upon and travel over the Access Highway in the following vehicles:

(1) Vehicles operated for the purpose of going directly to or from performances at the Wolf Trap Farm Park for the Performing Arts.

(2) Buses operated in common carriage of persons by companies holding a certificate of public convenience and necessity for an operation for which use of the highway is appropriate, and buses operated by the Fairfax County School System.

(3) Until January 1, 1985, or until the opening of the highway in the Dulles Access Highway

(iii) A vehicle occupied by the driver only and displaying a decal that bears an FAA approval permanently affixed to the front and rear bumpers of the vehicle.

(4) A vehicle described in paragraphs (b)(3)(i) and (ii) of this section shall be an authorized carpool and a vehicle described in paragraph (b)(3)(iii) of this section shall be an "authorized vehicle." The driver of such a carpool or vehicle shall operate in compliance with the requirements of road signs pertaining to the Access Highway erected or posted upon the Access Highway or the approaches thereto.

(c) Except in an emergency, no operator of a private vehicle may—

(1) Enter or leave the Access Highway through an entrance or exit road or ramp other than one constructed by the FAA as part of the Access Highway system;

(2) Make a U-turn on the Access Highway;

(3) Enter or cross the median strip of the Access Highway;

(4) Use an exit road or ramp to enter the Access Highway;

(5) Use an entrance road or ramp to leave the Access Highway; or

(6) Operate the vehicle in violation of speed limit signs and other operating signs posted on the Access Highway.

(Amdt. 159–1, Eff. 2/4/63); (Amdt. 159–17, Eff. 4/1/80); (Amdt. 159–28, Eff. 11/21/83)

applicable noise limit set forth below. No adjustment for gross weight will be allowed:

Arrivals: 85 dBA as generated on approach.

Departures: 72dBA as generated on takeoff.

(b) An operation scheduled to arrive before 10:00 p.m. and which is cleared for its approach before 10:30 p.m. shall not be subject to the noise limit for arrivals set forth in paragraph (a) of this section.

(c) Aircraft types and models which are not listed in Advisory Circular 36–3B may be operated at Washington National Airport if the FAA determines that the aircraft type and model would meet the noise limits of paragraph (a) of this section if it were tested in accordance with the procedures of Part 36 Appendix C of this chapter and the operator obtains approvals required by § 159.59(a).

(d) *Availability of advisory circular.* Advisory Circular 36–3B may be inspected and copied at any FAA Regional Office or General Aviation District Office. Copies of the circular are available free of charge and may be obtained from any of those offices or from the DOT Distribution Unit, M–443.1, Washington, D.C. 20590.

(Amdt. 159–27, Eff. 3/1/82)

§ 159.41 Confinement of aircraft operations.

No person may operate an aircraft on the Airport except on a hard surface area unless otherwise authorized by the air traffic control tower. No person may use a taxi strip on the Airport for a takeoff or landing except as authorized by the Airport Manager.

(Amdt. 159–9, Eff. 8/5/68)

§ 159.47 Disabled aircraft.

The owner of an aircraft or part thereof that is disabled shall have it promptly repaired or moved from the Airport unless he is required to delay it pending investigation of an accident. If he does not remove it within a reasonable time, the Airport Manager may remove it at the owner's expense and without liability for additional damage resulting from the removal.

§ 159.48 Malfunctioning aircraft.

No person may operate an aircraft on the ramp area or at any aircraft gate position on the Airport until the Airport Manager or his designee has allowed that operation if—

(a) That person has reported, has knowledge of, or has been advised of, an indication of a fire in the aircraft;

(b) The brakes of the aircraft are inadequate because they are malfunctioning; or

(c) The aircraft has completely lost power on one side.

Complete loss of power on one side in the case of three-engine aircraft means loss of power of the center and one other engine.

(Amdt. 159–6, Eff. 10/4/65)

§ 159.49 Accident reports.

(a) Each operator of an aircraft that is involved in an accident on the Airport shall report it fully to the Airport Manager within 24 hours after the accident. The report must include the name and address of the person reporting.

any reason that he considers justifiable.

§ 159.53 Minimum pilot certificate requirement.

No person operating a civil aircraft may land at or take off from the Airport (including touch and go operations) unless he holds at least a private pilot certificate.

(Amdt. 159–7, Eff. 3/29/66); (Amdt. 159–12, Eff. 12/4/69)

§ 159.55 Registration of aircraft.

The pilot of each aircraft whose owner or lessee does not have a contract with the United States for the aircraft to use the Airport, shall register at the operations office of the Airport fixed-base operator immediately upon landing and shall report to that operations office before taking off.

(Amdt. 159–8, Eff. 7/22/66)

§ 159.57 Demonstrations.

No person may give a flight or ground demonstration on the Airport, and no person may bring an aircraft to the Airport for an aerial demonstration within the Airport control zone without the specific approval of the Airport Manager. This section does not apply to courtesy flights, with new equipment, by air carriers.

§ 159.59 Aircraft equipment and operation rules.

(a) Except when authorized by the Airport Manager, no person may operate a fixed-wing aircraft on the Airport unless it has a tail or nose wheel and wheel brakes.

(b) If the pilot of an aircraft that does not have adequate brakes is authorized by the Airport Manager to taxi his aircraft, he may not taxi it near a building or a parked aircraft unless there is an attendant at the wing of his aircraft to help him.

(c) Notwithstanding paragraphs (a) and (b) of this section, an aircraft that has wings and tail higher than five feet from the ground and does not have adequate brakes may not be taxied on

§ 159.60 [Reserved]

(Amdt. 159–20, Eff. 1/5/81); (Amdt. 159–22, Eff. 4/26/81); (Amdt. 159–23, Eff. 4/26/81); (Amdt. 159–23, Eff. 4/26/81); (Amdt. 159–24, Eff. 3/30/81); (Amdt.159–25, Eff. 5/26/81); (Amdt. 159–26, Eff. 11/30/81); (Amdt. 159–27, Eff. 12/6/81); (Amdt. 159–29, Eff. 12/3/86)

§ 159.61 Taxiing rules.

(a) No person may move an aircraft on the Airport in a careless or reckless manner.

(b) No person may start or run an engine in an aircraft on the Airport unless there is a competent person in the aircraft at the engine controls, and unless blocks have been placed in front of the wheels or the aircraft has adequate parking brakes.

(c) No person may run an engine of an aircraft parked on the Airport in a manner that damages any other property or aircraft, or that blows paper, dirt, or other material across taxiways or runway, so as to endanger the safety of operation on the Airport.

(d) Each person operating an aircraft on a part of the Airport that is not under the direction of air traffic control shall comply with the orders, signals, and directions of the authorized representative of the Airport Manager.

(e) No person may start or taxi any aircraft on the Airport in a place where the exhaust blast is likely to cause injury to persons or property. If the aircraft cannot be taxied without violating this paragraph, the operator must have it towed to the desired destination.

(f) Each person operating a large propeller-driven aircraft shall lower its flaps when taxiing out of an aircraft gate position.

(g) No person may move a rotorcraft at a place on the Airport (other than a heliport) while its rotors are turning unless there is a clear area of at least 50 feet from the outer tip of each rotor. No person may move a rotorcraft at a heliport while its rotors are turning unless there is a clear

use it.

(b) Except in an emergency, no person may enplane or deplane passengers on the Airport in an area that has not been established for that purpose by the Airport Manager.

(c) No person operating a private, itinerant, nonscheduled, or military aircraft may park, stand, from a double parked aircraft through any gate other than the gate at which the aircraft is parked.

(f) Each person operating a jet aircraft on the Airport shall use only the gates designated by the Airport Manager for jet aircraft.

(d) Drunkenness.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.73 Sanitation.

(a) No person may release, deposit, blow, or spread any bodily discharge on the floor, wall, partition, furniture, or any other part of a public comfort station, terminal building, hangar, or other building on the Airport, other than directly into a fixture provided for that purpose.

(b) No person may place any foreign object in any plumbing fixture of a public comfort station, terminal building, hangar, or other building on the Airport.

(c) No person may dispose of sewerage, garbage, refuse, paper, or other material on the Airport except in a receptacle provided for that purpose.

(d) No person may eat food or drink a beverage on the Airport except in areas specifically designed for that purpose.

§ 159.75 Preservation of property.

No person may, without the specific permission of the Airport Manager:

(a) Destroy, injure, deface, or disturb any building, sign, equipment, marker, or other structure, tree, flower, lawn, or other public property on the Airport;

(b) Walk on a lawn or seeded area of the Airport;

(c) Alter, add to, or erect any building on the Airport;

(d) Make an excavation on the Airport; or

(e) Willfully abandon any personal property on the Airport.

gerous weapon, concealed on unconcealed, on or about his or her person or accessible property on the airport unless the weapon—

(i) If a firearm, or a pellet pistol or pellet rifle, is unloaded or, if another type of weapon, is deactivated to the extent possible; and

(ii) Is packaged for shipment in a container that is locked or otherwise secure;

(2) Carry any bomb or similar explosive or incendiary device, concealed or unconcealed, on or about his or her person or accessible property on the airport; or

(3) Carry any bomb, or similar explosive or incendiary device, or deadly or dangerous weapon on or about his or her person or accessible property—

(i) When performance has begun of the inspection of the individual's person or accessible property before entering the sterile area; or

(ii) When entering or in a sterile area.

(b) No person may furnish, give, sell, or trade a weapon on the airport.

(c) For the purposes of this section, a weapon includes a firearm, pellet pistol or rifle, dagger, razor, stiletto, knife with a blade longer than three inches, blackjack, bow and arrow, sling shot, slung shot, metal knuckles, or any object of a like kind.

(d) Paragraph (a) of this section does not apply to Special Agents and Security Officers of the Department of Transportation, persons authorized to carry a weapon aboard an aircraft as described in §§ 107.21, 108.11 and 129.27 of this chapter of the CFR or to a law enforcement officer on official duty. Paragraph (a)(1) of this section does not apply to any person who has received the written permission of the airport manager to carry

in the case of a pellet pistol or rifle, contains no pellet in the chamber with compressed gas or compressed and latched spring.

(f) For the purpose of this section, ''sterile area'' means ''sterile area'' as defined in § 107.1 of this chapter.

(Amdt. 159–30, Eff. 6/5/87)

§ 159.81 Coin-operated machines.

No person may, on the Airport:

(a) Use or attempt to use a coin-operated machine that requires the deposit of a coin for its use, without first depositing the coins required by the instructions on the machine;

(b) Place or attempt to place, in a coin-operated machine, a slug, foreign coin, or object other than the coin required by the instructions on the machine; or

(c) Pass through, over, or under a turnstile that requires the deposit of a coin for its use, without first depositing the required coin in the turnstile.

§ 159.83 False report.

No person may make a false report of conduct on, or the operation or use of, the Airport to the Airport Manager or any Airport police officer.

§ 159.85 Interfering or tampering with aircraft.

No person may interfere or tamper with an aircraft on the Airport or put its engine in motion, or use any aircraft, aircraft parts, instruments, or tools on the Airport, without the permission of the owner.

§ 159.87 Repairing of aircraft.

No person may repair an aircraft, aircraft engine, propeller, or apparatus in an area of the Airport other than that specifically designated for that purpose by the Airport Manager. However, this does not prevent a minor adjustment being made while the aircraft is on a loading ramp preparing to takeoff, if the adjustment is necessary to prevent a delayed takeoff.

except—

(1) A person assigned to duty at that place;

(2) An authorized representative of the Administrator or the Civil Aeronautics Board;

(3) A passenger who, under appropriate supervision, is entering the apron to embark or debark; or

(4) Any other person authorized by the Manager, or by a tenant for an area he occupies.

(c) ''Restricted area'' under this section means an area of the airport where entry is prohibited or limited to certain persons by means of a barrier, a sign, or a verbal statement of an airport security agent, operations officer, or law enforcement officer.

(Amdt. 159–30, Eff. 6/5/87)

§ 159.91 Commercial activity.

(a) No person may engage in any commercial activity on the Airport without the approval of, and under terms and conditions prescribed by, the Airport Manager.

(b) For the purpose of this section ''commercial activity'' means any activity undertaken for profit including the sale, provision, advertisement or display of goods or services.

(Amdt. 159–18, Eff. 7/28/80); (Amdt. 159–19, Eff. 10/26/80)

§ 159.93 Certain non-commercial activities.

(a) This section applies to the following activities undertaken not for profit but for non-commercial purpose (hereinafter referred to as ''non-commercial'' activities):

(1) The distribution of any written or printed matter to the general public including distribution for the conduct of surveys and petitions. The distribution of items or material other than printed material will be treated as a ''commercial activity'' under this part.

(2) The solicitation of funds from the general public whether or not in connection with the distribution of written or printed matter.

the activity authorized and the area in which it may be conducted.

(c) *Procedure.* Unless by prior application all available permits have been granted, applications will be processed as follows:

(1) Each person who seeks to distribute written or printed matter without soliciting funds or selling such matter shall immediately be given a single permit for leafletting for noncommercial purposes upon his request.

(2) Each person who seeks to solicit contributions or sell written or printed matter may do so only in connection with religious expression or as a representative of a noncommercial organization. Each such person shall immediately be given a single permit upon submission of an application, signed by the applicant, containing the following:

(i) The applicant's name, address, and telephone number.

(ii) The name, address, and telephone number of the organization that the applicant purports to represent, and a letter or other documentation that the applicant has authority to represent that organization. (This submission is not required of an individual who would be soliciting in connection with religious expression and who is not representing an organization.)

(iii) The name and title of the person in the organization who will have supervision of and responsibility for the activity at the airport, if applicable.

(iv) A statement that the sale of printed matter and/or the solicitation of funds is for noncommercial purposes.

(v) One of the following:

(A) A statement signed by the applicant that the applicant represents, and will be soliciting funds or selling written or printed matter for the sole benefit of a religion or religious group.

(B) A statement signed by the applicant that the applicant represents, and will be soliciting funds or selling written or printed

an official Internal Revenue Service (IRS) ruling or letter of determination stating that the organization or its parent organization qualifies for tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5).

(D) A statement signed by the applicant that the applicant's organization has applied to the IRS for a determination of tax-exempt status under 26 U.S.C. 501 (c)(3), (c)(4), or (c)(5), and that the IRS has not yet issued a final administrative ruling or determination on such status.

(E) A statement signed by the applicant that the applicant's organization has on file with the Virginia Administrator of Consumer Affairs a current registration statement in accordance with the Virginia Annotated Code, Section 57–49 (1978 Cumulative Supplement), ''Registration of Charitable Organizations.''

(d) Failure to submit the information required by paragraph (c) of this section shall result in denial of a solicitation permit. Upon request, for a leafletting permit, or upon submission of a completed signed application, for a solicitation permit, a permit shall be issued unless all available permits have been issued to prior applicants.

(e) Applications for permits must be submitted to the Operations Office of the airport concerned. Permits will be granted on a a ''first come, first served'' basis. The area will be granted on a ''first come, first choice'' basis. The permits are not transferable except among individuals who have completed and submitted applications for the same permit.

(f) *Duration.* Each permit shall authorize the holder to conduct non-commercial activities for a period of 48 hours. Permits shall not be extended or renewed. After the expiration of the permit a new leafletting or solicitation permit may be issued to the former permit holder upon request or submission of a new application respectively. In such a case, applicants may be permitted to incorporate by reference any required documentation filed with a previous application.

(iii) The main concourse and balcony (2),

(iv) The north terminal (2),

(v) The sidewalk in front of the Piedmont Aviation Terminal (1).

(2) Dulles International Airport between 4 p.m. and 8 p.m.

(i) Upper level main concourse south of ticketing area (4),

(ii) Lower level south concourse (1),

(iii) Lower level east (1),

(iv) Lower level west (1).

The areas are on display on a floor plan at the Operations Office of each Airport.

(h) Nothing in this part shall be construed as impairing or expanding any right which an airport lessee may otherwise have, by virtue of its leasehold interest in airport premises, to regulate access to those areas under its exclusive control.

(Amdt. 159–18, Eff. 7/28/80); (Amdt. 159–19, Eff. 10/26/80); (Amdt. 159–21, Eff. 10/26/80)

§ 159.94 Prohibited conduct relating to non-commercial activity.

No person may conduct non-commercial activity:

(a) Without a permit or with a permit that has expired.

(b) With a permit issued in response to an intentionally false application.

(c) With a permit outside the area designated on the permit.

(d) Within 10 feet of the following:

(1) A ticket counter,

(2) A baggage claim facility,

(3) A departure gate check-in counter,

(4) A departure gate lounge,

(5) An anti-hijack security screening point,

(6) Premises leased for the exclusive use of a concessionaire,

(7) Restroom facilities,

(8) A stair, escalator or elevator,

(9) A doorway or entrance way,

(10) A motor vehicle with embarking or disembarking passengers,

directed at another person in a manner intended to harass that other person.

(g) By intentionally touching or making physical contact with another person unless that other person has consented to such physical contact.

(h) By repeatedly attempting to distribute written or printed matter to, or to solicit funds from, another person when that other person has indicated to the solicitor that he or she does not wish to accept any matter or to make a donation.

(i) By use of a loudspeaker, sound or voice amplifying apparatus without the permission of the Airport Manager.

(j) By setting up a table, counter or stand without the permission of the Airport Manager.

(Amdt. 159–18, Eff. 7/28/80); (Amdt. 159–19, Eff. 10/26/80); (Amdt. 159–21, Eff. 10/26/80)

§ 159.95 Commercial photography.

(a) Except as provided in paragraph (b) of this section, no person may take a still, motion, or sound picture on the Airport for commercial purposes without the permission of the Administrator.

(b) The Airport Manager may allow any of the following to take pictures on the Airport for commercial purposes:

(1) Professional photographers and motion picture cameramen photographing events on the Airport as representatives of news concerns or bona fide news publications.

(2) Professional photographers and motion picture cameramen photographing events at the Airport, for nonprofit exhibit, to stimulate interest in air commerce or travel, or for nonprofit educational purposes.

(3) Professional photographers photographing scenes on the Airport for general artistic purposes.

§ 159.97 Use of roads and walks.

(a) No person may travel on the Airport except on a road, walk, or other place provided for the kind of travel he is doing.

disposal of garbage, ashes or other waste material on the Airport without the approval of the Airport Manager.

§ 159.99 Animals.

(a) No person may enter the Airport with a domestic or wild animal without the written permission of the Airport Manager, except a:

(1) Person entering any part of the Airport (other than the terminal building, gate loading area, or other restricted area) with a domestic animal that is kept restrained by a leash or is confined so as to be completely under control;

(2) Person entering the terminal building or gate loading area with a small domestic animal (such as a dog or cat) that is to be transported by air and is kept restrained by a leash or is confined so as to be completely under control; or

(3) Blind person entering the terminal building or gate loading area with a seeing-eye dog.

(b) No person may hunt, fish, pursue, trap, catch, injure or kill any bird, fish, or animal on the Airport, except when specifically authorized by the Airport Manager.

(c) No person may ride horseback on the Airport without permission of the Airport Manager.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.101 Loitering.

No person may loiter or loaf on any part of the Airport. If a loitering or loafing person is told by an Airport police officer to move on or leave the Airport, he shall do so.

§ 159.103 Drugs.

(a) Except for a physician or pharmacist licensed to practice by a State, possession, or the District of Columbia, no person, while on the Airport, may prescribe, dispense, sell, give away, offer to sell, or administer any dangerous drug, or have such

football, baseball, golf, tennis, bandy, hockey, shinny, or any other game in which a ball, stone, or other substance is thrown, struck, or otherwise propelled, except during a period and in an area designated by the Airport Manager for playing that game.

§ 159.107 Use of Airport and airspace.

(a) No person who has been denied the use of the Airport by the Airport Manager may enter on or use the Airport except while traveling through as a passenger in an interstate bus or taxi or while embarking or debarking as a passenger on an aircraft operating on the Airport.

(b) No person, except an employee of the United States performing his official duties or a person who has the specific permission of the Airport Manager, may prepare to operate, operate, or release a kite, parachute, or balloon, model aircraft, or rocket on the Airport.

§ 159.109 Impersonation.

No person, except a member of the Bureau of National Capital Airports Police Force, may:

(a) Represent himself as a member of that Force;

(b) Assume or exercise the functions, powers, duties, or privileges of a member of that Force; or

(c) Wear or have in his possession a badge, uniform, or other insignia that is, or purports to be, that worn by a member of the Force.

§ 159.111 Forgery and counterfeiting.

No person may make, possess, use, offer for sale, sell, barter, exchange, pass, or deliver any forged, counterfeit, or falsely altered ticket, permit, certificate, placard, sign, or other authorization or direction purporting to be issued by or on behalf of the Administrator or the Airport Manager in controlling, operating, maintaining, or protecting the Airport.

Fahrenheit to clean an aircraft, aircraft engine, propeller, or appliance, on the Airport, unless it is done in the open air or in a room specifically set aside for that purpose. If a room is used, it must be fireproofed, be equipped with automatic sprinklers, and have adequate and readily accessible fire extinguishing apparatus.

§ 159.123 Open-flame operations.

No person may conduct an open-flame operation on the Airport without the specific permission of the Airport Manager.

§ 159.125 Smoking.

No person may smoke on any Airport apron or ramps, in any hangar or shop, in any aircraft on the Airport, or in any other place on the Airport where smoking is specifically prohibited by the Airport Manager.

§ 159.127 Storage.

(a) No person may store or stock material or equipment on the Airport in a manner that constitutes a fire hazard.

(b) No person may keep or store any flammable liquid, gas, signal flare, or other similar material in a hangar or other building on the Airport. However, such a material may be kept in an aircraft in proper receptacles, in rooms or areas specifically approved for that storage by the Airport Manager, or in safety cans approved by appropriate insurance underwriters.

(c) No person may keep or store lubricating or waste oils in or about a hangar, except in a room specifically designated for oil storage. However, not more than a 12-hour supply of lubricating oil may

(Amdt. 159–11, Eff. 1/10/69)

§ 159.129 Apron surface areas and floor surfaces.

(a) Each person to whom space on the Airport is leased, assigned, or made available for use shall keep the space free and clear of oil, grease, or other foreign materials that could cause a fire hazard or a slippery or otherwise unsafe condition.

(b) No person may use any material (such as oil absorbents or similar material) that creates an eye hazard when picked up, swirled, or blown about by the blast from an aircraft engine in any passenger loading area or other public area.

§ 159.131 Doping.

(a) No person may conduct a doping process on the Airport except in a properly designed, fireproof, and ventilated room or building in which all lights, wiring, heating, ventilation equipment, switches, outlets, and fixtures are explosion-proof, spark-proof, and vapor-proof, and in which all windows and doors are easily opened.

(b) No person may enter or work in a dope room while doping processes are being conducted unless he is wearing spark-proof shoes.

§ 159.133 Fueling operations.

(a) No person may fuel or defuel an aircraft on the Airport while:

(1) Its engine is running or is being warmed by applying external heat;

(2) It is in a hangar or enclosed space;

(3) It is within 50 feet of any hangar or other building on the Airport; or

(c) No person may start the engine of an aircraft on the Airport if there is any gasoline or other volatile flammable liquid on the ground underneath it.

(d) No person may operate a radio transmitter or receiver, or switch electrical appliances on or off, in an aircraft on the Airport, while it is being fueled or defueled.

(e) During the fueling of an aircraft, on the Airport, the dispensing apparatus and the aircraft must both be grounded in accordance with orders and instructions of the Airport Manager.

(f) Each person engaged in fueling or defueling, on the Airport, shall exercise care to prevent the overflow of fuel, and must have readily accessible and adequate fire extinguishers.

(g) During the fueling or defueling of an aircraft, on the Airport, no person may, within 50 feet of that aircraft, smoke or use any material that is likely to cause a spark or be a source of ignition.

(h) Each hose, funnel, or appurtenance used in fueling or defueling an aircraft on the Airport must radio maintenance, is being done on that aircraft.

§ 159.137 Operating motor vehicles in hangar.

No person may operate a motor vehicle in any hangar on the Airport unless its exhaust is protected by screens or baffles.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.139 Grounding of aircraft in hangars.

No person may park an aircraft in any hangar or other structure on the Airport unless the aircraft is grounded in accordance with the orders and instructions of the Airport Manager.

§ 159.141 Runway foaming services.

Each operator of an aircraft for which runway foaming services are provided on the Airport at his request shall pay the expenses arising from providing those services.

may keep uncovered trash containers on a sidewalk or road or in a public area of the Airport.

(b) No person may operate an uncovered vehicle to haul trash on the Airport.

(c) No person may operate a vehicle for hauling trash, dirt, or any other material on the Airport unless it is built to prevent its contents from dropping, sifting, leaking, or otherwise escaping.

(d) No person may spill dirt or any other material from a vehicle operated on the Airport.

§ 159.155 Bulletin boards.

Each lessee of a hangar or other operational area specified by the Airport Manager on the Airport shall maintain a bulletin board in a conspicuous place in his hangar or area. He shall post on that board current workmen's compensation notices, a list of competent physicians, a list of his liability persons or property.

§ 159.159 Fire apparatus.

Each tenant or lessee of a hangar, shop, facility, or other operational area specified by the Airport Manager on the Airport shall supply and maintain adequate and readily accessible fire extinquishers, approved by fire underwriters for the hazard involved, that the Airport Manager considers necessary.

§ 159.161 Discrimination or segregation.

All services performed in operating a facility at the Airport must be without discrimination or segregation as to race, creed, color, sex, or national origin.

(Amdt. 159–11, Eff. 1/10/69)

§ 159.173 Rules of conduct.

Subpart D—Rules of Conduct of this part applies on board the mobile lounges except where inconsistent with this subpart.

§ 159.175 Rules governing mobile lounge service.

(a) Not more than 102 persons may enter a mobile lounge to be carried on any trip, and the carrier may not admit more than this number to a mobile lounge.

(b) No person may enter a mobile lounge unless he is admitted by the carrier. The carrier may admit any person to a mobile lounge except—

(1) An unaccompanied child under 5 years of age, unless the carrier accepts him for transportation in the aircraft and he is attended by the carrier or its agent;

(2) A person in a wheelchair, unless he is in an ''aircraft-type'' portable seat and is attended to insure his mobility;

(3) A person on a stretcher;

(4) A person who appears to be intoxicated;

(5) A person whose clothing or equipment is in such a condition that it might soil, stain, or otherwise damage the lounge; and

arrives at the check-in counter after the baggage carts have departed for the aircraft and there is no other practical method of transportation;

(2) Domestic pets and animals that are allowed by the carrier to travel in the passenger compartment of the aircraft;

(3) Firearms, rifles, or sporting guns that are disassembled or in cases and are acceptable for transportation by the carrier; and

(4) ''Carry-on'' baggage that, when carried by the passenger, meets any size, weight, and number-of-pieces requirements set by the carrier.

(d) No person may display, serve, or consume any food or beverage in a mobile lounge and no carrier may allow any person to do so.

(e) The Airport Manager may grant exceptions from paragraphs (b) or (c) of this section in any case on a showing that the use of other means of conveyance between terminal building and aircraft would constitute an unusual hardship, and that the persons or property to be transported on the mobile lounge have been or will be transported on the carrier's aircraft. Such an exception is granted only under conditions that will prevent danger or discomfort for any persons or injury to any property.

(Amdt. 159–11, Eff. 1/10/69)

(1) *Signatory carriers.* Unless the carrier has a contract with the Airport management which provides otherwise, the carrier shall pay a landing fee for each of its aircraft that comes to a full stop at the Airport. The fee shall be paid at a rate for each 1,000 pounds or part thereof the maximum authorized landing weight of the aircraft permitted at the Airport. The rate per 1,000 pounds will be calculated by the Director, Metropolitan Washington Airports to recover the net direct and allocated costs of the airfield cost center, including utilities. The fee shall be calculated annually and adjusted for the underrecovery or the overrecovery of the prior year's costs.

(2) *Non-signatory carriers.* Each non-signatory carrier shall pay a landing fee equal to 125 percent of the current fee applicable to signatory carriers under paragraph (a) of this section.

(3) *Other operators.* All other users of the Airport shall pay landing fees on the same basis and at the same rate as the signatory carriers except that a minimum landing fee shall be applicable as provided in paragraph (a)(4) of this section.

(4) The minimum landing charge at Washington National Airport and Washington Dulles International Airport for all aircraft, including helicopters, shall be $4.00.

(b) There is no landing charge under this section for the following:

(1) Public aircraft.

(2) Aircraft departing from the Airport that are compelled to land at either Airport for safety reasons without landing at any other airport.

tor, Metropolitan Washington Airports the fee established by the Airports for the service as follows unless the carrier or operator has a contract with the Airport which prescribes a different fee:

(a) Common use facilities—for use of the holdroom areas, baggage claim areas, baggage roadways, and porter facilities: The landing fee prescribed by § 159.181.

(b) Mobile lounge fees per trip: $50.00.

(c) Federal Inspection Service fees (established annually) for use of the area where the Federal Inspection Services are performed: The fee per passenger paid by the signatory carriers.

(Amdt. 159–31, Eff. 6/5/87)

§ 159.184 Definitions.

For the purpose of §§ 159.181 and 159.183:

(a) A ''signatory carrier'' is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled or non-scheduled operations under Part 135, that has entered into a contract with the Airport specifying the fees and charges for use of the Airport; and

(b) A ''non-signatory carrier'' is a carrier operating under Part 121, Part 127, Part 129, or providing scheduled operations under Part 135, that does not have a contract with the Airport specifying the fees and charges for use of the Airport.

(c) Public aircraft means aircraft used only in the service of a government or a political subdivision. It does not include any government-owned

Subpart I—Enforcement [Reserved]

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